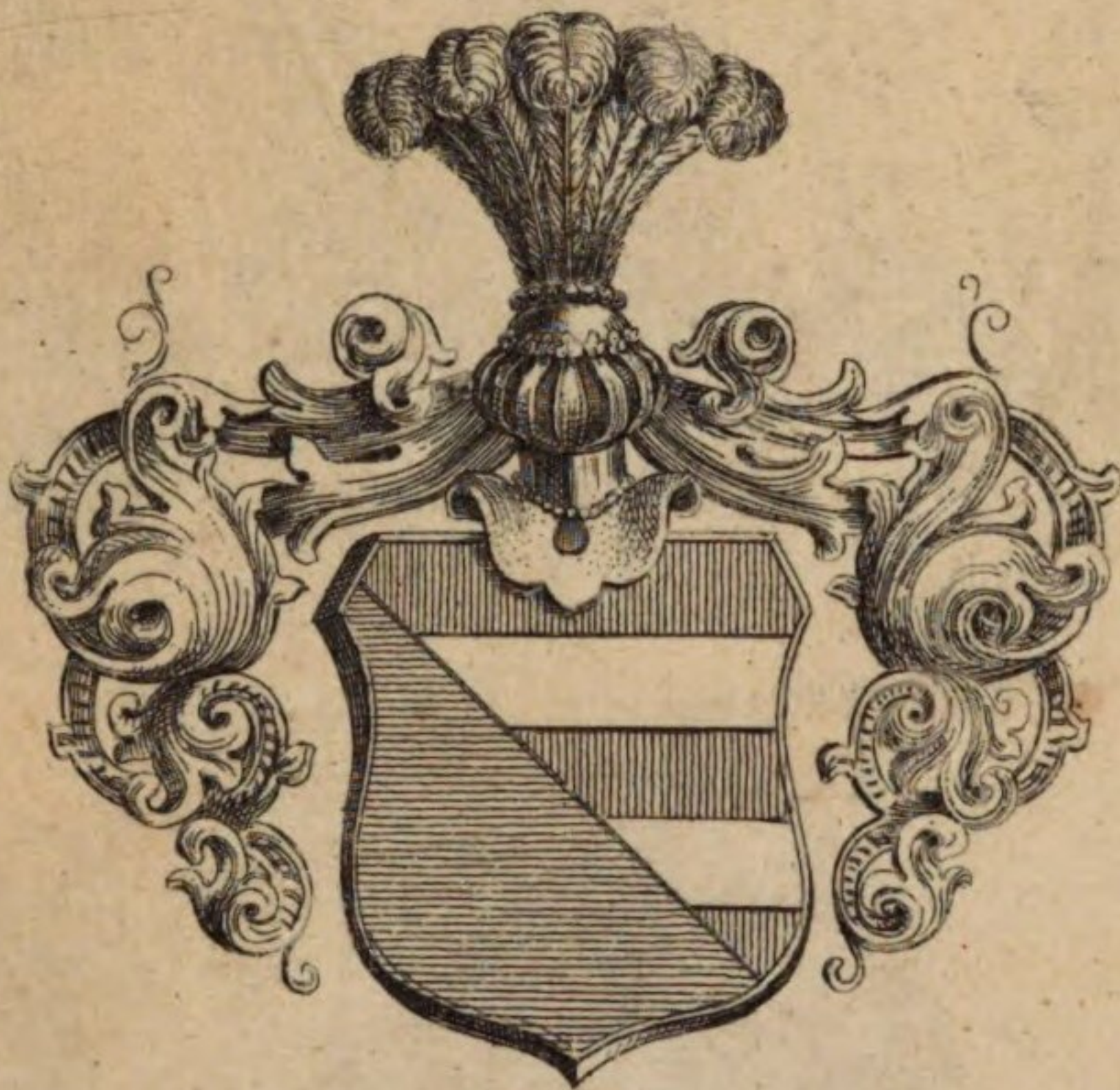


J. publ. E. 477 i

(

A I 508.



Dr Strausberg.

<36606368360011

<36606368360011

Bayer. Staatsbibliothek



AN
ENQUIRY
INTO THE
FOUNDATION AND HISTORY
OF THE
LAW OF NATIONS IN EUROPE,
FROM THE
TIME OF THE GREEKS AND ROMANS,
TO
THE AGE OF GROTIUS.

BY ROBERT WARD,
OF THE INNER TEMPLE, ESQ. BARRISTER AT LAW.

Semina nobis Scientiæ dedit Natura, Scientiam non dedit.—SENECA

IN TWO VOLUMES.

VOL. I.

L O N D O N :

PRINTED BY A. STRAHAN AND W. WOODFALL,
LAW PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY;
FOR J. BUTTERWORTH, FLEET-STREET.

1795.

7. m. 5. 477 $\frac{1}{2}$

ENQUIRY
PREFACE

FOUNDATION AND HISTORY



1794
Bm

PREFACE.

THE following work was originally intended to be nothing more than the preliminary discourse to one much less speculative, and of a more confined range.—I had, as well from taste, as from views of a private nature, which it is immaterial to mention, been led much to the study of the Law of Nations. I had thrown together a body of notes upon the particular parts of it, which were more immediately the object of my enquiries, and I conceived the design of collecting them into a work, which

would have been called “A Treatise of Diplomatic Law.”

The nature of Sovereignty, and the rights of independent States; the manner in which they were created, and the mode of their communication by Ambassadors; the different sorts of Embassies, and the consequent division of the Representative Character into Ministers of the first and second order; their rights and privileges, particularly their inviolability; the rank and pretensions of the nations of Europe; the nature and laws of Negotiation and Treaty; the legal sources of their authority, and the mode of their interpretation; all this I meant to consider.

I had

PREFACE.

I had collected my materials, and made my arrangements; the authorities, the facts and the cases were ready, and I had nothing to do but to put them into language.---But, previous to this, a very important consideration engaged my attention, which, though it has moved the enquiry of every man that ever came to the study of laws, must for ever be interesting, and has not always been satisfactorily disposed of. I mean the account of that obligation in general, under which we conceive ourselves bound to obey a law, *independent* of those resources which the law itself provides for its own enforcement. I was more particularly called to this consideration on the subject

before me, because the law of which I was about to treat, having no common tribunal to execute its decrees, men were left merely to their consciences to determine whether they would obey it or not. Upon turning to the fundamental parts of all the treatises I had perused, I found myself referred to the Law of Nature for the real and original source of all the obligation in men to obey the Law of Nations ; and this Law of Nature again, I was told to look for in my own heart and natural conscience, which were to decide for me *and all the world* in the same manner, in almost all cases. At the same time, the system of the Law of Nations was neither more nor less than a particular,

lar,

lar, detailed, and ramified system of morals, in which departure was made from that great outline, and those general perceptions, constituting the Law of Nature, and we were brought to the minute application of them to cases and doctrines peculiar to particular sets of people. All this, notwithstanding, was supposed to be really binding upon *all the world*, though it was confessed that all the world did not, and would not obey it. Cases of nicety even were brought forward and canvassed upon general principles, which *all*, it was held, were bound to observe, and they were therefore called upon to think alike of these *particular* cases, although they were a mere *application* of

the general principles, and about that application, different writers were far from being agreed.

I own this never satisfied me ; and when I considered how difficult it was *for the whole of mankind* to arrive at the *same* ideas of moral good, from the prejudices of education and habit, in the different stages of society in which they might be ; more particularly when I recollected the great difference of opinion there was among very learned men, of the same nations and ages, and who had had the same sort of education concerning the Law of Nature itself ; I was still more staggered in my belief that *all* the world were bound to obey the ramified and
definite

definite scheme of duties called the Law of Nations.

When I examined into my own belief concerning my obligation to obey this Law, I found it well fortified, and sufficiently firm. But it was so, from a particular set of opinions which I had imbibed from education and the force of example, confirmed and directed by the authority and precepts of a religion in which I believed. Something certainly might be derived from my own natural propensities and feelings: but these last were far less distinguishable than the first; and, had they been wholly independent of them, I found that they *perhaps* might not carry me so far as I certainly was willing

willing to go, under the influence of those other weightier considerations. Still less, therefore, did I consider, that other persons, who had perhaps been taught by education, example and religion, to think of their duty towards their neighbour in a manner totally different from what was laid down in *our* Codes of the Law of Nations, could be bound to act exactly in the way prescribed by those codes. Neither could I imagine that I had any right to act towards all other people as if they had *broken a law*, to which they had never submitted, which they had never understood, or of which they had probably never heard. Where we were under the express commands of the Deity concerning

cerning them ; or where they professed to observe a Code, so directly the opposite of ours, as to interfere with our happiness and just rights ; then, indeed, I could conceive we might act towards them as towards *enemies*, whose disposition it was, like beasts, to prey upon us ; but even then I did not perceive the fairness of considering them as amenable to the laws we chose to pursue, or as punishable for *breaches* of those laws,

It followed, therefore, that, although I myself could make out the obligation of the Law of Nations as laid down in the *European* Codes, and that others of the same class of nations, and the same religion with myself,

self, could, and were bound to do so too; yet that the law was not obligatory upon persons who had never been called upon to decide upon its ramifications; who might widely differ as to its application, and even as to its general and fundamental principles. The history of mankind confirmed to me that there was such a difference in almost all its extent; that men had the most opposite opinions of their duties towards one another, if not in the great outline and first principles of those duties, yet most certainly in the application of them; and that this was occasioned by the varieties of religion and the moral systems which governed them, operated upon also by important local

circumstances which are often of such consequence in their direction.

Under all these points, it appeared to me, that we expected too much when we contended for the *universality* of the duties laid down by the Codes of Law of Nations; that, however desirable such an universality might be, the whole world were not susceptible of that intimacy and closeness of union, which many philosophers of high name are willing to suppose; that it falls into different divisions or *sets* of nations, connected together under particular religions, moral systems, and local institutions, to the exclusion of other divisions or sets of nations; that these various divisions

divisions may indeed preserve an intimacy among one another, and obey the same law ; but that they may be contra-distinguished from others who may have different religions, and moral systems, operated upon by very different local circumstances : in fine, that what is commonly called the Law of Nations, falls very far short of *universality* ; and that, therefore, the Law is not the Law of *all* nations, but only of particular classes of them ; and thus there may be a *different* Law of Nations for *different* parts of the globe. Not only this, but even, in the same part of the globe, there may have been very different sorts of Law of Nations, according as revolutions have taken place

place in the religion, system of morality, and local institutions of the nations which compose it.

All this was to be proved from history, if proved at all. And, if the Theory was a just one, as any class of Nations would afford a proof of it, I set myself to a very serious examination of the history of the people of Europe, (as that in which we are most interested,) not with the old view of enquiring into their *general* manners and customs, their politics, their feats of arms, or their arts ; but with the design to get at the maxims which governed their intercourse together, at various times, and under various revolutions in their manners ;
and

and these I resolved to set forth in detail, as a supplement and proof of the theoretical reasoning which I have mentioned.

This arrangement, however, as must be evident, took in a subject so vast, that to treat of it properly would far surpass the bounds of a mere preliminary discourse. At the same time it appeared to me to be fully of as much, or perhaps of more consequence than the work which had originally given rise to it; and as professional occupations prevented me from finishing the whole, I resolved to abandon my first plan altogether, and to confine my attention to this other subject which had thus
grown

grown out of it. And well have I been repaid for the labour it has cost me; since my mind has been minutely occupied by a series of the most important and interesting subjects, of which, before, it had had but a general idea. For although very great masters have gone over all, or most of the ground I have taken, before me; yet they have done so in a very different manner, and with far different objects. Thus, although the facts I have brought together in the historical part of the following pages, have most of them long been known, and many of them form the materials of very popular histories; yet the view with which I came again to their contemplation,

b

plation, made them appear to me in a new light ; and although I had attended to most of them before, yet I acquired from them fresh entertainment, because they afforded me fresh instruction.

The facts of history indeed lie open to every man's observation ; and every man draws conclusions from them, according as the bent of his mind, his professional pursuits, or any particular purpose inclines him. In this respect, history would be valuable, were it no more than a dry series of events, brought together with accuracy and clearness for philosophy to work upon. This, in some measure, has been the case. The first histories

ries are short and rude, and *apparently* uninformative, from the want of proper comments. In process of time, men have distinguished themselves, and done good to the world, by the use which their observation and judgment have made of them, and they then assume a variety of different and novel forms. Thus, from the same collection of facts, one has drawn a history of man; another, of the progress of society; a third, of the effects of climate; a fourth, of military achievements; a fifth, of laws in general; a sixth, of the laws of a particular state. But it has never yet been the fortune of the annals of the world (at least not within my knowledge) to produce, from any

commentator, A HISTORY OF THE
LAW OF NATIONS.

In this point of view, history may be compared to a vast and diversified country, which gives very different sorts of pleasure to different travellers, or to the same traveller if he visits it at different times. One travels to acquire a knowledge of men; another to survey the political resources of the state; another with a view to its commerce; another for mere pleasure: and the same people, the same cities, and the same institutions, will afford high and varied satisfaction according to the spirit of mind in which they are viewed. If the comparison hold good, I should hope that little apology

logy is necessary for bringing before the world, many facts and cases already well known to it, but all the consequences of which are, perhaps, not so well known. Thus for example, every one knows that *Charlemagne* renewed the Western Empire; that the *Hanseatic League* was a powerful commercial association; that the *Queen of Scots* was put to death by *Elizabeth*, contrary to justice; and that prisoners of war used to pay large sums for their liberty to those who took them. Yet those who have related all these things, were not perhaps led to consider what relation they bore to the LAW of NATIONS at the time when they happened; the real nature of the Imperial title thus

acquired by *Charlemagne* ; the question of the *sovereignty* of the Hanseatic alliance ; the effects, as a precedent, *in point of law*, of the case of Queen MARY ; nor the rules, public and private, by which the custom of RANSOM was governed.

In the relation of any transaction, however, I have studiously avoided all those parts of it which did not appear to me to be directly relevant to the point immediately before me ; and I have gone from one history and one age to another, and from one part of the same transaction to a different part of it, as it suited the enquiry I was upon, without staying to complete any account which I had begun, when

when such completion was not necessary for the purpose with which I wrote.

In considering the effects of certain great local institutions upon the Law, such as the FEUDAL SYSTEM, the ECCLESIASTICAL ESTABLISHMENTS, the CRUSADES, or CHIVALRY ; I have not even attempted to give any account of the Institutions themselves ; but supposing them perfectly well known to the reader, or referring him to such authors whose professed object was to treat of them ; I have barely selected such parts of them as are connected with my own subject : thus, the history of Fiefs ; the particular duties of vassal and Lord ; the

account of the papal usurpations over the *Clergy* of particular kingdoms ; the causes, or history of the *Crusades* ; the minutiae of the military duties of *Knights* ; the law and custom of *Tournaments*, or the rise and fall of *Chivalry* in general ; all these I have purposely avoided, and have busied myself alone about those parts of them which bore upon the maxims concerning the public intercourse of nations.

It follows, therefore, that those who come to the perusal of this work ought, in common justice to the subject, to be in possession of much previous knowledge. It follows also, I hope, that however obliged I may be
to

to the learning and patience of those who have gone before me, upon the progress of mankind; yet the manner in which that subject is now treated, is not destitute of novelty. Upon many of the above-mentioned points, men of high characters for learning and sagacity, have dived into antiquities, and have erected systems. It has been my part to consider how those systems operated upon the Law of Nations; a question which they thought too remote from their subject, or which they never thought at all of considering. Thus Pfeffel, Montesquieu, St. Palaye, Selden, and Robertson, have with great diligence and learning surveyed particular parts of the history of Europe, with a
view

view to their own particular purpose. I have largely profited by their labours, and have followed them with great respect through those erudite and critical disquisitions which led to the settlement of doubtful points, the elucidation of which was necessary before my own enquiries could even begin. At the same time I have by no means always contented myself with the mere authority of their names; but have gone over, wherever I had opportunities of so doing, the original documents on which they have founded their reasoning. Much indeed have I to wish that these opportunities had been greater; but such is the immense mass of their knowledge, and the extensive range of their subjects,

jects, that I had neither time, nor materials, nor abilities, to pursue them minutely through all the intricacies which they have unravelled. From the little, however, which I was enabled to do myself, I gained much. It imprinted the important matters contained, more strongly on my mind; it added greatly to my own stores; it taught me where to look for much necessary learning, and enabled me, if such presumption may be allowed, to gather up some few things which had escaped their attention. Some of the niceties of the Feudal System, which might have been gained from *Beaumanoir* and *Du Cange*, and the entire discussion concerning the rank and claims of
of

of the Emperor, which Robertson has wholly passed by, may probably prove this.

These observations, however, relative to those who have preceded me, are not to be extended beyond a small part of my subject. In the discussion of many points I had not the benefit of their assistance, and was left entirely to my own resources, such as they were. Almost the whole, for example, of the *History of the Law of Nations*, of the critical chapters upon the effects of Treaty and Convention, and the Rank and Claims of the Nations of Europe, were to be collected alone from a careful attention to a dry series of early Treaties,

ties, or the comparifon of a number of infulated facts. I have endeavoured alfo, all the way through, to engraft as much new matter as my own ftudies could acquire, upon the mafs which had been gathered together by the critics and hiftorians I have mentioned; and for this I was driven to the infpection of many of the monks, and of thofe vaft collections of laws which do fo much honour to the patient labour of the antiquaries.

Such then is the view which I have attempted to take, and fuch the authorities I have fought in the *hiforical* part of the following Treatife. I will not flatter myfelf by fuppoſing that

that its scope is *entirely* new ; but I am not unwilling to hope, that opinions which have hitherto rather been hinted than detailed at large, have here been brought forward under a more ample and accurate form. For it has been my best endeavour to fix in their proper place, and to set in a broad and clear point of light, opinions upon the facts of history which are only to be collected by dint of much reflection, and the frequent comparifon of things which pafs off in the general detail, as matters of little confequence.

Upon the whole, then, the work which is now prefented to the world, may be faid to confift of two parts.

The first is occupied with endeavouring to settle the construction of the Law of Nations ; and above all, as most necessary to the fabric, what is its real foundation. In this our attention is most claimed by an enquiry into the obligation of Natural Law, and the endeavour to discover whether that Law can conduct us, and *the whole world*, to think exactly in the same way concerning those definite and particular schemes of duty which compose the province of moral philosophy. And in this very important enquiry, that I may not be mistaken, I beg leave here to observe, that I mean not by any means to *reject* the Law of Nature as forming a *part* of the foundation of the Law of
Na-

Nations ; but simply to point out, that while men have been known to entertain such discordant opinions concerning the *ramifications* of that Law, it cannot lead us to that certainty concerning virtue, which would oblige *all mankind* to think of it exactly in the same manner : If this is so, therefore, that we must look to something else as the *binding principle* of Duty, and that those only we can expect to think alike, concerning it, who are known to have the same opinions concerning the *Binding Principle*. I by no means intend to say, that into the composition of this *Binding Principle* the Law of Nature, *according to our ideas of it*, does not enter. But I hold that there
may

may be others who have also *their* Binding Principle, for the moral system which *they* chuse to follow, into which the Law of Nature, according to *their* ideas of it, may *also* enter: and if these two systems should recommend very opposite things as *duty*, the Law of Nature being thus (*under different interpretations*) common to both, we cannot expect an *uniformity* of opinions, merely because we chuse to say that they rest upon that Law.

If this therefore be just, I hold that there may be systems of morality called the Law of Nations, of very different characters, and that if we trust to the Law of Nature alone for

c

a guide,

a guide, we may be disappointed in expecting to find an uniformity of sentiment in the nations to whom we may address ourselves. And hence it is necessary not only that we should have something more fixed and definite as the foundation of the Law of Nations, but that we should content ourselves with composing a code for those nations alone, who think as we do concerning that foundation.

This something more fixed and definite, I conceive to be RELIGION ; not *natural*, (for that is nearly as vague as the *Applications* of Natural Law itself) but *revealed*. For however floating the ideas of mankind may be concerning natural duty, the precepts
of

of such a religion must at least superinduce CERTAINTY among those who believe in it.

Hence therefore it is, *in addition* to the Law of Nature, not with a view to reject it, that I hold religion, and the moral system engrafted upon it, to be the truest foundation for that code of morality which we call the Law of Nations.

I am the more anxious that I should be so understood, because I have unfortunately been thought to mean things very different, by some professional friends, in whose judgment and acquirements I have no inconsiderable confidence. Upon view-

ing (before the work was completed,) the discussion contained in the second chapter, they contended, that although I had stated the argument in favour of the *uniformity* of the Law of Nature, with fairness against myself, and although I professed to confine my objections solely to the uniformity of *the application* of that Law; yet that my own argument went to its utter annihilation; and that whatever I might think, I had yet made out Man, *independent of Christianity*, to be a creature about whose nature we had no lights at all, and who had a *right* to consider his own will and appetite as his law.

Whether

Whether I have done so or not ; whether I have not endeavoured cautiously to extend my meaning solely to *the application* of Natural Law to certain *definite* and *positive* duties, the reader is now to judge ; but at any rate, should my mode of treating the subject be thought to go to so great a length, I am not sorry here to have an opportunity of giving a key to the argument, as far as my own intention respecting it, is concerned. In the discussion to which I allude, there were not wanting many persons in whose knowledge I also confide, who differed in toto from those above-mentioned ; and on a subject which is of confessed hardness, and has divided the opinions of men far above

me in every sort of attainment, I cannot but expect much difference of sentiment upon almost every thing that can be said of it. But the demonstration of the possibility to mistake my own meaning upon the matter, makes it desirable for me to have thus an opportunity of doing justice to myself. At the same time it is right to mention, that the objections that were actually made, though opposed, as I observed, by others, induced me to make a little, and but a little alteration in the chapter, after it was printed. It is confined solely to the endeavour to tie down the meaning of the argument, so as that it cannot now, I believe, be misunderstood.

With

With respect to the positions themselves, I can have nothing here to add. They have for ever divided the opinions of mankind ; and I pretend not therefore to the power of shaking the sentiments of men who may have considered, and made up their minds upon the subject. All I hope from these, is the acknowledgment that I have stated the argument in favour of uniformity with perspicuity and fairness. Of the answers to that argument, those to whom the subject may be new, will now judge for themselves.

The second chapter having endeavoured to destroy the idea of uniformity and certainty in the opinions

cerning *the application* of Natural Law to the duties of human life ; I proceed in the third to enquire what it is that will produce greater certainty, at least among particular classes of nations ; and having shewn it to be the religious and moral systems of those nations, I rest the foundation of their Law upon those religious and moral systems. I afterwards endeavour to prove, that CHRISTIANITY is the only *certain* foundation for that code which is observed by Christian, in other words, by European nations.

These three chapters are therefore to be taken together, before we can complete the account of the foundation and construction of the Law
of

of Nations in Europe. The fourth chapter is a mere ramification of the argument in the other three, which goes to prove that the Law of Nations is not to be considered as the Law of the World, but only of particular classes of Nations, united together by similar religious and moral systems, and influenced by particular local institutions. The fifth is an attempt to point out how different *classes* of nations may be distinguished: and with this finishes what may be considered as the first part of the enquiry.

Of the second we have already said much. It is needless to add that it comprises the historical part of the work, and is to be considered as the
neces-

necessary consequence and proof of the first. In this I have begun as early as any certain documents would permit me, nor will any reader perhaps be wishful to go deeper into the antiquities of Europe than the commencement of the Empire of the Greeks and Romans. Dr. *Falconer* will excuse me for having presumed to differ from him in the endeavour to account for the opposition of the maxims concerning their treatment of prisoners, which were observed by those nations. The subject was not before him except collaterally ; but I neither wish, nor mean to challenge his attention to a part of my enquiries, on which I have to confess that I have not used much labour.

The

The account of the *Scandinavian* Law of Nations, is one of the strongest proofs of our theory. The effect of their military religion, if I may so call it, upon their duties towards their neighbours, was palpable and violent; the regularity and order of the world were by them annihilated; and from the time of their establishment upon the ruins of the Roman Empire, the history of the Law may be almost said to re-commence. It will be needless to point out to the reader the great use which in this part of my work I have made of the Northern Antiquities compiled by M. Mallet; whose selections are not more instructive as a picture of the mind of man, than they are pregnant with genius as beautiful poems.

In

In the course of this *Historical* part of the Enquiry, I have, I fear, pursued but little method. Wherever I have found events of the same kind crowding after one another in a perpetual stream, I have followed them in a mere plain relation; nor have I aimed at farther order in the recital, than to endeavour to class facts of the same character together. Where, however, I have found a period in which new and striking changes in the law present themselves to notice, and the conduct of nations proceeds upon principles unknown before; I have then stopped the current of the history, and digressed into a critical enquiry concerning them. Thus the eighth, ninth, and tenth chapters, are a mere

series of events ; the twelfth, thirteenth, fourteenth, fifteenth, and sixteenth, form so many critical disquisitions concerning the influence of certain particular points, which gave a new character to the maxims of Europe. The seventeenth Chapter resumes the thread of the history chronologically, with this new character accounted for, (as far as it lay within my ability to account for it,) and continues it to the seventeenth century, beyond which I meant not to extend it.

Why I have fixed upon this period as the close of the Treatise, is to be explained, partly by the consideration that the law has from that time
been

been nearly stationary ; but chiefly because it was the age of GROTIUS, to whose Treatise little can be added, and from whom on any point it would be almost in vain to differ. Before his time the true principles of the Law of Nations were scarcely known. He broke ground, as it were, for a new cultivation ; but he did it with such ability, that the plans which he traced, and the method which he introduced have scarcely been altered, and remain to this day the proofs of a skill which was consummate.

By his exertions the law was new modelled, and the reasons for our duty as practised at this day, were
either

either absolutely started for the first time, or marshalled in better order than they had ever yet been before. Beyond the Treatise therefore DE JURE BELLI ET PACIS, it was scarcely necessary to go, except to mention the few others that have attained to the honour of constituting, in conjunction with it, the codes of the duties of nations as observed at present. The state of the law as a science, immediately previous to the publication of this incomparable work; a very slight account of its author, and its progress, together with the reasons which gave birth to the works of PUFFENDORF and VATTTEL, finally close the present Enquiry.

From

From this account therefore of the following Treatise, it will be seen that it pretends not to lay down what the law now is, but merely endeavours to point out what it *has been*. It may be said to be the history of former opinions, and does not therefore assume any thing like a legislative tone. I shall be too happy if, humble as the design confessedly is, it may be deemed to have derived the smallest merit from the manner of its execution ; and I shall be more than paid, if it ever arrives at the rank of being considered as an elementary book, for those who come new to the study of the subject.

I have

I have a little, and a very little to add concerning the execution of the work. The reader will no doubt observe that I have not been sparing in quotations, both in the body of the Treatise, and in the Notes. I am aware myself, how this interrupts the attention, and particularly how it interferes with uniformity by the necessary change of style! But in an enquiry of this kind it was perhaps unavoidable. Many parts of it are purely critical, and therefore argumentative; and in these cases we know how little an author's word can, or ought to be taken. I mean not to say that he would wilfully declare what he does not believe, or any thing of which he does

d

not

not *think* himself certain ; but such is the constitution of our natures, that we are liable to be led away by a favourite system, and often to be deceived by a particular bent of mind. Where this therefore is possible, it becomes the absolute, the bounden duty of the author, to set before his reader the sources of his information ; and, if he argues from cases or authorities, to state them in the very same simplicity and amplitude, under which they appeared to *him*. This has often seemed so necessary to various writers, that they have generally subjoined at the end of their works, *Appendices*, or *Collections* of what they call *Proofs* and *Illustrations*, which those who read
for

for mere amusement, have as generally neglected. But as I profess not to write for those who read for mere amusement, I have had no scruple in interweaving these proofs and illustrations so closely with the body of the work, that the one is made to depend upon the other for its very connection and uniformity.

And I have chosen this mode the rather, because, as I pretend to no attractions of arrangement or style, I am sensible that the merit (if any) of the following pages, must depend simply upon the faithfulness and accuracy with which authorities are quoted. I am therefore not deterred by the fear, (so common, I have observed, with many writers) of inter-

rupting the course of the narrative, or of diverting the reader's attention. I know not indeed if I am right, but I have long thought that the art of bringing plain and authentic documents into a clear point of view, so as to affirm or deny a thing, or to prove that it cannot be either affirmed or denied, is the great merit of historical or of argumentative writing. Too great an attention to the decorations of language, may often lead us far away from this true point. It may please, but without the other it cannot fill the mind ; it often leads to error, and is at best but meretricious.

This therefore is another object to which I have shaped my exertions ; and, whatever may be my opinions

con-

concerning a point of doctrine, or a particular transaction, if I may be thought to have stated them with clearness, and supported them with sufficient authorities, it is all the praise I can expect, since it is all to which I have aspired.

In the investigation of certain matters, I have ventured to quit the beaten path, and to differ from authorities whose deserved reputation would overwhelm me, did I not feel well supported by illustrious auxiliaries. Had I therefore nothing but myself to oppose to them, I should not have dared to have sallied forth from obscurity. But being thus supported, I have without the wish,
d 3 and

and at the same time without the dread of provoking controversy, attempted to set forth the grounds for my opinions. What I allude to, are, amongst others, the questions concerning the difference of treatment experienced by Greek and Roman prisoners ; the privilege of private war in the antient Barons ; the *Sovereignty* of the Hanseatic League ; the nature of the Imperial Dignity ; the exemption of Ambassadors from the jurisdiction of the criminal Courts of Law in England ; and the case of Queen Mary of Scotland ! It is with very great diffidence that a young professor of the science of law, can pretend to withhold his assent on these points from whatever his superiours

perious have asserted before him. Why he has done so, he has endeavoured with all his ability to explain, and the public will judge, I hope, with their usual candour.

Throughout the whole I have to lament the total want of assistance from men of experience and authority. The work which is now presented to the world, is in fact the mere lucubration of a private person, left entirely to himself to collect his materials, to speculate, and to decide. At the same time, the sole reason for this perhaps, was his fear of trespassing upon the time of such men, when it might be more profitably employed for themselves and

for their country : Since however irksome it must always be to intrude our works upon others for correction, the well-known liberality of the learned professions deprives the intrusion of the greater part of its terrors.

One thing more before I have done. In the course of the following pages, there will be found some few allusions to the late transactions of the French Nation. In all that I have said concerning them, I claim to be considered as a man arguing without prejudice, partiality, or resentment. I have not gone out of my way either to meet, or to avoid the subject ; and on all occasions wherein

wherein I mention them, I profess to have taken them up simply as the best illustrations I could find for the argument I might have in hand.

And, as in one place I particularly observe, all that I have said of them, may be so said, when we are in profound peace with them, or at some future time, when the names of France and England, their mutual rivalry, their hatred, or their contempt, will be only known in the relations of History. At the same time it is in fairness to be remarked, that the conduct of this nation is now *somewhat* mended, and that the points most complained of were the effects of the influence of a merciless tyrant, or of dark minded ruffians
who

who have already, most of them, met their reward.

And now I will release both the reader and myself, from a discussion, which I feel to be growing but too long. The hopes and anxieties of a young author committing himself for the first time to the public, whose praise or whose censure, he has not hitherto been even in the way to court or to fear ; will be my excuse if I have trespassed too much in this prefatory discourse. I cannot conclude without observing, that whatever may be the fate of the main design ; whether it be received with favour, or rejected with contempt, I have this sound consolation ; that my intention

tention has been to do good to my fellows in that province for which by inclination or study I am best fitted. To endeavour after this is the duty of all mankind, and if the work fails, the glory of the attempt may perhaps alleviate the disgrace of the fall,

*Inner Temple,
March 20th, 1795.*

ALPHA-

ALPHABETICAL TABLE OF THE PRINCIPAL MATTERS.

n. signifies, that the matter referred to, is contained in a *note*.

ABUSSAC, K. of Morocco, Treaty of several European States with, ii. 531, 2.

ADAM OF BREMEN, his description of the effects of Christianity in Denmark. ii. 11, 12.

ADOPTION of Knights and Sovereigns by other Knights or Sovereigns, ii. 188. See Chivalry:

ADOPTION of Sovereigns, alienation of dominions by, ii. 263.

ADRIAN IV. (Pope) the oath taken by him at the coronation of the Emperor Barbarossa, i. 276.

ADULTERY, common among Savage Nations, i. 81, 2. *n.*

ALARIC, his respect for the Christian Religion, i. 230.

ALBANY, Cardinal of, his interference in favour of the prisoners of the Duke of Anjou on the Capture of Montpellier, ii. 52—54.

ALBERICUS Gentilis, supposed the Roman Civil Law to be the Law of Nations, ii. 608. Deficiency of his book, 613.

ALBOIN, Prince of the Lombards, good faith of Turisund towards, i. 233.

ALEXANDER (Pope) his mediatory Letter to prevent War between France and England, ii. 45.

AMBASSADORS, distinguishing characters of, i. 360, 1—ii. 545.
—Rights of, vindicated by the Romans, i. 188, 9.

Infecure under the European Law of Nations, from the 11th to the 15th Century, i. 280—286—becoming Prisoners of War on the death of their Sovereigns, i. 285.

Of Darius, their ill treatment by the Greeks explained, i. 176.

Of the Spartans and Corinthians, murdered by the Athenians, i. 176: See ii. 496.

Of the French and Spaniards, continued contests between, for precedence, ii. 394, 454—462. See, Nations of Europe, rank and claims of.

Christian, how capriciously ill treated by the Ottomans, ii. 474—477, 497.

lxii ALPHABETICAL TABLE OF

AMBASSADORS,

Resident, or in Ordinary, a peculiar feature of the European Law of Nations—ii. 477. (See Lieger)-Reason and Origin of such Embassies in Europe. ii. 478—483-did not apply to the Antients, ii. 479—481-By whom first sent and entertained, ii. 483—5, *n.*-Not of Natural Right, ii. 483, *n.*-inconveniences of, ii. 485.

Extraordinary, custom of sending, as old as Society itself, and therefore is almost a Natural Right, ii. 477.

Their inviolability universal in principle, ii. 477, 8. 486. 492, 4—7-exceptions among the Turks, 497. See, Inviolability of Ambassadors.

Punishable by their own Sovereigns, to whom they are sent back; and who must disavow their proceedings, or become open enemies, ii. 515—519, 523, &c.

No Instance of their being *tried* by the Laws of the Country to which they are sent, ii. 521.

How punishable, in atrocious and dangerous cases, by the Nation to which they are sent, ii. 546—556-always by way of self-defence, not by regular trial, ii. 547-Instanced in the Case of Gyllenburg, the Swedish Ambassador to England, in 1717; ii. 548—550-What shall constitute the necessity which may authorise the restraint, dismissal, or even death of Ambassadors, a dangerous, difficult and chimerical question; ii. 550—2.

Their Suite, whether privileged in criminal cases, ii. 552—6-Instances in which this privilege was waved, ii. 553; or denied, ii. 553, 4-conclusions from, ii. 554, 6. See Inviolability.

Their privilege of being covered in the presence of Sovereigns, ii. 563, 602, *n.*

Of Obedience, to the Pope, ii. 383, 4.

Of the Pope, termed Nuncios, ii. 384.

AMBROSE St. Archbishop of Milan, his Reproof to Theodosius, ii. 41—43.

AMERICA, conquest and settlement of, by the Spaniards, under the Pope's Grant, ii. 111, 114-by English Monarchs, ii. 114—116.

ANALYSIS,

ANALYSIS, a mode of Philosophizing, applicable as well to Morals as to Physicks, i. 66.

ANCUS MARTIUS, his Institution of the Roman Ceremonies in declaring War, i. 184.

ANDREGHAM Marshal, Case of his Capture and Release on Parole by Edward the Black Prince, ii. 181, 2.

ANJOU, Duke of, his Behaviour to his Hostages, i. 289, 290, his cruelty on the Capture of Montpellier, ii. 52, 54.

ANTIOCH, Prince of; See Saladin.

APANAGES, dangerous to Monarchies, i. 364, 5.

APPEAL to Neutral Nations by Powers at Variance; a strong feature of improvement in the Law of Nations, i. 323. -Instance of, in the dispute between the Kings of Aragon and Navarre in 1176; i. 323-in the contest between Henry III. and his Barons, i. 324-other instances, i. 325-The most regular instance, that of Edward III. against John K. of France, i. 326-of Edward III. to the Pope, against Philip of Valois, ii. 49-Probable Origin of this Appeal to Neutral Nations, ii. 50.

To Superior Lords as a Common Court, or High Tribunal, in cases of Delinquency by an inferior Feudatary, consequences of, i. 377—388-Instances of in, John King of England, i. 377—379-Henry III. King of England, i. 379, 380-Edward I. i. 380-Edward II. i. 381 - Edward III, i. 382-Edward the Black Prince, i. 383-Charles the Bold i. 383, 4-Charles the Bad K. of Navarre, i. 384-John Baliol, K. of Scotland, i. 385-other instances, i. 386, 7.

ARRIERE-Fiefs, creation and effect of, i. 368.

ATHEISM, the profession of men even in civilized Societies, i. 108, 112.

ATHEIST bound by the Law of Nature, i. 53, 94.

ATHENIANS, inconsistency of their character, i. 178, 180.

ATTILA the scourge of God, how justly so called, i. 215.

ΑΥΤΟΚΕΦΑΛΟΙ, Bishops formerly so stiled, and why, ii. 80.

ΑΥΤΟΚΡΑΤΩΡ, title of the Emperours of the East, ii. 392.

lxiv ALPHABETICAL TABLE OF

AUXILIARY Treaties, their rise and effect, ii. 291—5-Principles of, ii, 291, 2-exemplified, in the Treaty between France and England in 1214, as to Sicily and Germany, ii. 292, 3-in the Treaty of Oleron, ii. 293-of Bretigny, ii. 293, 4.

B

BALANCE of Power, part of the Law of Nations in Europe only, i. 147, 8-Origin of, i. 369.

BARBAROSSA, Frederick (Emperour) See Adrian IV.-Doge of Venice.

BARBARY States, Treaties with, i. 165, 8 : ii. 331, 2.

BARONS, Feudal, their right of private War, i. 347, 8-See Private War - How far to be considered as Sovereigns, i. 393—5.

BARONIUS, his Apology for the Rudeness of Pope Celestine III. to the Emperour Henry VII. ii. 92.

BARRIER, erected between Sovereigns meeting to treat with each other, i. 279, 280.

BARTHOLOMEW, St. See Massacre.

ΒΑΣΙΛΕΥΣ, a title assumed by the Eastern Emperours, ii. 396.

BEATRICE, Sister of Constance, Queen of Arragon; Case of her Deliverance from Captivity, i. 255.

BEAUVAIS, Bishop of, anecdote of, i. 365.

BECKETT Thomas à, his military pomp, i. 366.

BEQUEST of Dominions by their Sovereigns, ii. 263, 4.

BEURNONVILLE, Commander of Soissons, the injustice of his Punishment, i. 261-Interceded for by many French Officers, his brothers in arms, ii. 204.

BIRGER (K. of Sweden) a Law of his against Slavery, ii. 31.

BISHOPS, their power co-equal, before the usurpation of the Pope, ii. 79, 80 - stiled therefore *Αὐτοκεφαλοὶ*, ii. 80 - their power in the primitive church, ii. 84.

BLACKSTONE, his opinion as to the Common Law of England relative to Ambassadors, ii. 502, 3: 543, n.

BOHEMIA, King of, his peculiar situation considered, ii. 416—419.

BONIFACE,

BONIFACE VIII. (Pope) his open usurpation of temporal Power, ii. 93 - his contest with Philip IV. of France, ii. 94—107—how ignominiously treated by Colonna and Nogaret, agents of Philip, ii. 105—his death, ii. 106.

BROTHERHOOD of God; what, and its establishment, ii. 24—6.

BROTHERS in Arms; See Chivalry; Fraternity of Arms.

BURLEMAQUI, an Opinion of his on the Law of Nations contested, i. 153.

C.

CALVERLEY Hugh de, Brother in Arms to Bertrand du Guesclin, ii. 203, 4. See Chivalry.

CANNIBALS, i. 81, n. 85.

CAPTIVES in War, slavery of, i. 10 - Slaughter of, by the Greeks, i. 179, 180. See Slavery; Slaves; Prisoners of War.

CARDINALS, their claim of precedence before Kings, ii. 385, 6.

CARNEADES, his reasoning on Morality, i. 72.

CASTLES, dangerous and vast number of, in England and France, between the 11th and 15th Centuries, i. 344, n.

CATHOLICS. See Religion (Christian)

CATO the Younger, case of his acting as a Soldier, i. 187.

CELESTINE III. (Pope) his insolence to the Emperour Henry VII. ii. 92.

CELTS the parent nation of the Gauls and Britons, i. 202—their contempt of life, and desire of a violent death, i. 203, 5, 7—their notions of Paradise, i. 206.

CHALLENGES between Kings and Generals. See Chivalry.

CHARLEMAGNE, his regret at the progress of the Danes and Normans, i. 221—his cruelty to his Saxon Prisoners, justified by the then Law of Nations, i. 224—his Policy in colonizing with Prisoners of War, i. 225—the improvements in the Law of Europe, owing to his comprehensive genius, i. 321—his Restriction of Private War, i. 346—

under

lxxvi ALPHABETICAL TABLE OF

- under the precepts of the Christian Religion, ii. 15-
 presided at the Council of Frankfort in 794, ii. 58-almost
 Emperour of Europe, ii. 81. See Emperour of Germany.
- CHARLES** of Anjou, his cruelty to his Prisoners, i. 246-his
 unjust treatment of Conraddin, i. 256. See Conraddin.
- CHARLES** the Bold, his imprudence, (according to the then
 Law of Nations,) in putting himself in the power of
 Lewis XI. i. 277, 8.
- CHEVALIERS** de Reconnoissance, ii. 206.
- CHIEFTAIN**, the Principal of a deadly Feud, i. 350, 4.
- CHILDREN** exposed and inhumanly treated by various Nations
 under Natural Law, i. 76, 7: Sacrificed to the Gods, i.
 84-under Natural Religion, i. 104.
- Crusade of; See Crusade.
- CHINESE**, why they do not entertain Resident Embassies from
 other Nations, ii. 481. See *n.*
- CHIVALRY**, its effect on the European Law of Nations, i.
 330, 5-Cap. 14, ii. 155-230.
- Origin of, ii. 155, 8.
- The cause of considerable improvements in the Laws of
 War, ii. 159, 160, 178. See *Post.*
- Liberality and Courtesy**, its two distinguishing attributes,
 ii. 162-instances of; in the behaviour of William Rufus,
 ii. 162, 3-Earl of Gloucester towards K. Stephen, ii.
 163, 4-K. Stephen himself, ii. 164-in not attacking un-
 armed enemies, ii. 165-in the general conduct of Ed-
 ward III. and the Black Prince, ii. 165-8-in the case of
 Bertrand du Guesclin, ii. 167, 8-Carlonnet, ii. 169, 212-
 French and English Monarchs, ii. 170, 1-the Talbot^s
 and Xantrailles, ii. 171-in moderating the Price of Ran-
 som, ii. 172. See Ransom.
- Fidelity**, another distinguishing attribute, ii. 174-a palpable
 means of improvement in the Law of Nations, ii. 174-5-
 and of War, ii. 178-Breach of, in Knights, how punished,
 ii. 176, 9. See Knights-The probable Origin of giving
 liberty on parole to procure ransom, ii. 179-Instances of
 in Waler and, Count of St. Pol, ii. 179-Tho. Percy, an
 English

English Knight, ii. 180 - Du Guesclin, ii. 180 - Such prisoners could not carry arms during their parole, ii. 180 - Instance ; in Charles de Blois, ii. 181 - Exception in Marshal d'Andregham prisoner to Edward the Black Prince, ii. 181, 2 - See Ransom ; Prisoner ; Hostages.

CHIVALRY,

Extension of Friendship, another feature of - By Adoption of Knights or Sovereigns by each other, ii. 188 - these, in fact, alliances, ii. 189 - Ceremony of by delivery of Arms, ii. 189 - 191 - See i. 233 - other ceremonies, ii. 191. This the origin of Knighthood, ii. 191 - Relationship supposed to arise from Adoption, ii. 191 - benevolent effects of in Adoptions, by the same person, ii. 191 - into the same order of Knighthood, ii. 192, 3 - extended even to assistants in the ceremony, ii. 193, 4 - one mode of adoption by a grant of the same Coat of Arms, ii. 195 - Instances ; in the Count de Chimay adopted by Ferdinand, K. of Aragon, ii. 195 - René d'Argenson ; and the custom of knighting Venetian Ambassadors in France on taking leave, ii. 195 - Duke de Richlieu ; who was created a Noble of Genoa, ii. 195 - Lord Malmesbury ; permitted to quarter the Arms of the houses of Brandenburg and Orange, ii. 196 - Another effect of Adoption, The Fraternity of Arms, ii. 196 - of Scythian original, *ib.* horrid ceremonies of, ii. 198, 9 - milder in civilised and Christian Countries, ii. 198, 9 - Effect of in amending the Law of Nations, ii. 199, 200 - used between Kings and States, ii. 200, 1 - interfered with political engagements, as in the Case of Henry K. of Castile, ii. 201 - but not with the duties owing by Knights to their Sovereigns, ii. 202 - though it then softened the asperities of War, *ib.* instanced in the case of Guesclin and Hugh de Calverley, ii. 203, 4 - and increased hospitality and esteem, ii. 205 - Hence the Chevaliers de Reconnaissance, ii. 206.

its effect on the general operations of States, ii. 206 - by introducing Regularity in the declara-

lxviii ALPHABETICAL TABLE OF

tion of War, ii. 206, 7.—instanced in the gallantry of Walter Manny, ii. 207, 8.—Form of such declarations; by Letter, as in the Case of Charles V. and Edward III. ii. 208, 9.—or by Heralds, as between Edward IV. and Lewis XI. ii. 209.—Origin of these forms, ii. 209, 210.—Regulation of, among German Princes by the Golden Bull, ii. 210, 211.—Magnanimity of the Chiefs in engaging each other, ii. 212.—In declaring the time and place for engagement between Armies, ii. 213.—Instanced between Edward III. and Philip of France, in 1339; ii. 213—in the battles of Agincourt, Verneuil, and Floddenfield, ii. 214, 5. and see *n.*—between Edward the Black Prince and Henry K. of Castile, in 1367; ii. 215.—These general challenges arose from the custom of private duels, ii. 216.—which also produced challenges between Leaders of Armies and Monarchs, in which Kingdoms were sometimes staked, ii. 217.—Instances of, by the Emperor Henry IV; Edward III. of England; Henry V. of England, ii. 217, 8.—By Champions; against Richard II. of England, ii. 218, 9.—Between Peter of Arragon and Charles of Anjou, in consequence of the death of Conraddin, ii. 219—222. See Conraddin—on the same quarrel between René, Duke of Anjou, and Alphonso, K. of Aragon, ii. 223.—See further Duels; Garrison.

CHRISTIANITY. See Religion (Christian)

CHURCH, immunities of, as a Sacred Place, ii. 16—18.—fighting and killing in, how punishable among the Saxons, ii. 16.

CLERGY, among Christians a distinct body of men; and why, ii. 33, 4.

CLISSON, Oliver de (Surnamed the Butcher) his conduct towards certain Hostages, i. 291 - Instance of his revenge, i. 297 - his imprisonment and ransom, i. 310, 311.

CODES of the Laws of Nations, what attention due to them, ii. 9.

COKE, his opinion; on the privileges of Ambassadors under the English Law; examined, ii. 533, 4 - on Treaties with Infidels, ii. 325 - doubted, ii. 326.

COLONNA

COLONNA, See Boniface VIII.

COMMERCE, Treaties and Conventions Respecting, ii. 337—358.

——— Utility of positive conventions in Regulating, ii. 337, 8—How far it is the duty of a State by the Law of Nature to encourage commerce, ii. 338—340—The Law of Nations on this subject, vague and indefinite, ii. 339—Remedied by positive Institutions, ii. 339, 340.

——— Causes why it did not flourish in the early ages, ii. 340, 1.

——— Earliest positive convention on the subject by Canute, with the Emperor Conrad and Pope John, ii. 341.

——— Protected by Laws, of the Maritime States against Piracy, ii. 342—of the Swedes, in cases of Shipwreck, ii. 342—of the Danes and Sicilians to allow Salvage, ii. 343—of the English in favour of Merchants, ii. 344—of Oleron, ii. 345—Recapitulated, ii. 345—9—Institutions of Wisbuy, ii. 349—351—Letter of K. Edward VI. in 1553; ii. 352—5—Regulations of the Flemish States, ii. 355—6—Consequences of the Regularity of these Conventions, ii. 356, &c.—in the protection of Merchants on the breaking out of War, ii. 356—8.

COMMON CAUSE, Treaties to make; their principle and origin, ii. 315, 6—Instances of; in 1197, between English Kings and Baldwin Count of Flanders, ii. 316, 7—Henry III. and Duke of Brittany, in 1225, ii. 317—Henry Earl of Luxemburg and Ferry Duke of Lorraine in 1266, ii. 317.

COMMONWEALTHS. See Republicks.

COMPANIES, Soldiers of Fortune, ii. 299—their origin, in bands of Mercenary Soldiers, ii. 303—5—their exploits, ii. 305—8—subsidized, and treated with, by various Sovereigns, ii. 307, 8—311—under Count Mansfeldt and the Duke of Saxe-Weimar; the latter subsidized by Richlieu, ii. 312—314.

COMYNS, Remark on his opinion as to the privileges of Ambassadors under the English Law. ii. 502, 534.

CONDOTTIERI, Soldiers of Fortune, ii. 299.

lxx ALPHABETICAL TABLE OF

CONRADDIN, Heir to the Crown of Sicily, unjustly punished as a Traitor by Charles Count of Provence, who had conquered his Kingdom, i. 256—259—Challenge of Peter of Arragon to Charles, in consequence, ii. 219—his case, quoted against the inviolability of Sovereigns out of their own territories, 300 years afterwards, ii. 582.

CONFEDERATION, Treaties of, their effect on the Law of Nations in Europe, ii. 272—291—Instances of, in cases, of the German States (See G) ii. 274—The Swiss Cantons, ii. 274—6 (See S.)—the Teutonick Hanse, ii. 276—290—See Hanseatick League.

CONSCIENCE, how far the general and unerring Rule of Moral Conduct, i. 51, 52, 87—Does not compel *all* Mankind to the observance of the same scheme of morals, i. 88, 91.

CONSENT, necessary to the Security of Society, in points doubtful by the Law of Nature, ii. 232.

CONSUL, the Custom of establishing, arose from Convention, ii. 331.

CONVENTIONS, See Treaties—A full instance of their forming part of the Law of Nations, ii. 351, 2.

COTTON, Sir Robert, his Reasoning on the Precedency of Nations, ii. 369, 370—examined, ii. 370, &c.

COUNCIL of Lyons, the first; cause and effect of, and proceedings at, ii. 59—71—Members of, ii. 61, 2.

———— the Second; Members of, ii. 72, 3—Proceedings at, ii. 73.

———— Trullanean; See T.

COUNCILS, General; their acknowledged power in Christendom from the XIth to XVth Century, ii. 67, 8, 9, 71, 74, 5—held of right as often as the Jubilees, ii. 73—Their controul over the Papacy, ii. 75—even to deposition, ii. 77—103—Not to be assembled without the Pope's Consent, ii. 103.

CROQUART, a Soldier of Fortune, i. 311.

CRUSADES,

CRUSADES, Origin of, i. 140-their influence on the Law of Nations, ii. 130, 1-in producing a new and perpetual cause for War against the enemies of Christianity; and for peace among its friends, ii. 131-instanced in the case of Spain, ii. 132-Portugal, ii. 133-Germany and France, ii. 133, &c.-in the Crusade against Saladin, ii. 134, 5-of St. Lewis, ii. 135.

Barbarity with which they were conducted, ii. 136—142-instanced in the death of the Prince of Antioch, ii. 137, 8-Pieul de Ragonet, ii. 138 - Massacre of the Prisoners at Ptolemais by Richard I. ii. 138, 9-cause of this barbarity, ii. 140, 1.

Considered as meritorious and expiatory in Monarchs, ii. 142, 3-undertaken, by children, ii. 143, 4-by the Pastoureaux or shepherds, ii. 144—6-decline of, ii. 146—150-a mean of getting rid of the banditti of a Nation, ii. 147-against Hereticks, ii. 150—153; 468—472, 3.

CUSTOM, has a considerable effect upon *Morals*, i. 115.

CZAR of Russia, meaning of the Term, ii. 395.

D.

DANES and Normans, principle of their exacting tribute from other Nations, i. 221.

DANES, their Law as to Salvage, ii. 343.

DEADLY Feud; See Feud.

DEATH, violent desired by the Celts and Scandinavians as honourable, i. 203, &c.

DEJOTARUS, K. of Galatia, his case, how far applicable to the Question of the inviolability of Sovereigns out of their own territories, ii. 581.

DIVORCE, power of the Pope as to, ii. 43; 254—6.

DOGE of Venice, origin of his wedding the Adriatic with a Ring, ii. 110.

DONNER SA FOI, the term made use of when a person agreed to remain prisoner of War, i. 304, and *n.*

DRUIDS, their Cruelty to Prisoners of War, i. 206.

lxxii ALPHABETICAL TABLE OF

DUCANGE, a position of his as to the Right of private war, i. 345, 6.

DUEL, distinct from the Right of private war, i. 354, n. one mode of terminating such War; and the reason, i. 357, 8. See Chivalry - Oath administered by the Wardens of the Lists, ii. 224 - Ceremonies on a defeat, ii. 224, 5. - Reward of the Conquerors, ii. 224, 5.

DUMOURIER, a Soldier of Fortune, ii. 314.

E.

ECCLESIASTICAL Establishments, their effect on the Law of Nations, Cap. 13. ii. p. 1, &c. See Religion (Christian).

ECCLESIASTICS, had the right of private war, i. 365, 6, n.

ECSPONDI what, i. 183.

EDWARD III. his Appeal to Christendom against John K. of France, i. 326. See *Appeal*. Ceremony of his homage to Philip of Valois, i. 372. — Appeal of Edward to the Pope against Philip, ii. 49, 50. — See Chivalry.

EDWARD IV. his conference with Lewis XI. at Picquigny, i. 279.

EDWARD the Black Prince, his conduct to the Envoys of Charles V. of France, i. 281. See Chivalry.

EDWARD VI. his famous Letter in favour of Commerce and Navigation, ii. 352—5.

ELECTIVE Government; See Government.

ELIZABETH Q. of England; Head of the Protestants, ii. 470. — Her Letter to Henry IV. of France on his change of Religion, *ib.* n.

EMBASSIES. See Ambassadors.

EMPERORS and Kings, distinction between. See Kings.

—— their Privilege of presiding over Councils, ii. 58.

—— and Popes, their mutual jealousy of each other, i. 276, 7. See Pope.

EMPEROR of Germany, this title inaccurate; is properly King of Germany and Emperor of the Romans, ii. 386.

His stile and title, *Elected Roman Emperor and King of Germany*, ii. 441. See Kings.

THE PRINCIPAL MATTERS. lxxiii

EMPEROR of Germany.

———— Cause of his precedence in Europe investigated and examined, ii. 396—442.

———— owing to the accident of his succession to the Roman Sceptre as swayed by the Western Emperors; which took place under Charlemagne in 800; ii. 396.

See 422, 3.

Questions arising thereon, 1. As to the revival of the old Western Roman Empire-2. What rights were renovated with the title - and 3. The affinity between the Kingdom of Germany and the Roman Empire, ii. 396, 7.

1. The Western Empire was revived in the person of Charlemagne, by the Election of the Roman people; ii. 397, 8; 424, 5.

2. The Rights renovated in the person of the Emperors disputable, ii. 398-arose from the remarkable union of dominion in Charlemagne, ii. 399-Idea that the Emperor was the temporal, as the Pope the spiritual, head of Europe, ii. 400-expressly acknowledged by some Nations, and tacitly allowed by others, ii. 400-By the English under Henry II. and Richard I. ii. 401.-Act of Sovereignty exercised by the Emperor Sigismund in France, ii. 401-one proof of these pretensions the power of creating Notaries, ii. 402, 3-High Ideas of the Imperial Prerogatives, ii. 402—5-asserted with a view to the enlargement of the Empire, ii. 405-Resisted by Edward III. of England, ii. 406-and Henry V. ii. 407-Salutation of his foot by inferior Monarchs, ii. 406.

His power of creating Kings, ii. 408, 9-how far the instance of Prussia applies, ii. 409—414-of Hungary, ii. 415, 6-generally confined to the Vassals of the Emperor, ii. 415-whether this power still remains, ii. 416—420-Case of the King of Bohemia considered, ii. 416—419. See Kings.

3. Real Nature of the Imperial Dignity and its present affinity with Germany, ii. 420—442-the territories of
the

lxxiv **ALPHABETICAL TABLE OF**

the German Monarch not the *genuine* remains of the old Roman Empire, ii. 421, &c.-Accession of Charlemagne to the Imperial dignity, ii. 423—6—who held almost all his possessions by different titles, ii. 426.—various Kings succeeded to the Empire, till Otho I. or the Great, brought back the Imperial dignity to the family of Germany, ii. 427—431.

When and how the Germanick Kingdom and the Roman Empire were united, ii. 438—by actual Convention between the Romans under Pope Adrian III, with Otho the Great, ii. 438.

The Remarkable Constitution of the Empire, ii. 439.—The Titles and Sovereignties of the Kingdom of Germany and the Roman Empire, still remain, abstractedly, distinct, ii. 440, 1.

EMPIRE, Princes of, by what means they have continued to be Sovereigns, i. 360.

ENGLAND more regular than other nations in their Laws of war from the 11th to the 15th Century, i. 266, 7—so, as to their private Wars, i. 362—5.

ENSPONDI what, i. 182.

ENTIUS, K. of Sardinia, could not obtain his ransom; and why; i. 301.

ESCHEAT of Fiefs to the Supreme Sovereign under the Feudal System, i. 383, &c.—Disputes as to, how decided, i. 389.—Instances of, in the case of, the Earldom of Provence, i. 390.—Artois and Burgundy, i. 391.—Milan, i. 391, 2.—These Escheats part of the Law of Nations in Europe as affected by the Feudal System, i. 393—5.

EUROPE, considered as a Republick of States, i. 149, 163, 5; ii. 55—73—change caused in this particular by the Lutheran Reformation, ii. 466, &c.

EXCOMMUNICATION. See Pope.

F.

FAIDÆ. See Feud (Deadly).

FALCONER,

- FALCONER, Dr. his reasoning on the principle of the Grecian Law of Nations, i. 195, 6-the justness of it examined, i. 196, 200.
- FEUD (Deadly) its Origin, i. 341—343—who implicated therein, i. 349, 350, 2, 3.
- FEUDAL System, its influence on the Law of Nations in Europe, i. Cap. XI. p. 329. 332, 3-Cap. XII. i. p. 337-Its most obvious effects; to multiply the number of Sovereign States, i. 339-to give a right of interference to nations with each other, i. 367. See Escheat; Private War.
- FIEFS and Arriere-fiefs, creation of, over the Western Countries, i. 367-8.
- Escheat of; See Escheat.
- FLEURY Abbé, his observations on the Bull *Unam Sanctam* examined, ii. 99.
- FORFEITURE of the real Sovereign power, can never legally or constitutionally happen, ii. 510—514.
- FOSTER, his opinion as to the inviolability of Ambassadors by the law of England, ii. 540, 1-examined, ii. 542, &c.
- FOWKES de Breauté, his resistance to the Civil Power, i. 357.
- FRANCE, the parent of many kingdoms, i. 358, n.-Origin of the States-General there, ii. 97. See French.
- FRANCIS I. *not* the first Christian Sovereign, who entered into alliance with the Turks, i. 167: ii. 334-his breach of the Treaty with Charles V. to be attributed to the imperfection of the Law of Nations, ii. 599—601.
- FRATERNITY of Arms. See Chivalry.
- FREDERICK of Austria, his unjust punishment, i. 257. See Conraddin.
- FREDERICK II. Emperor, and Innocent IV. (Pope) the contest between them, and the decision of the first Council of Lyons thereon, ii. 59—71.
- FRENCH Republic withdrew from the observance of the Law of Nations; and how; i. 183: ii. 238; 357-opinion that the bounds of its Empire had been marked out by Nature,

lxxvi ALPHABETICAL TABLE OF

Nature, i. 78-its departure from humanity, i. 153, *n.*-in the decree for the slaughter of prisoners, ii. 172, 3-its contempt for the Christian Religion, one cause of its crimes, ii. 7, 8. See *Genet*; *Atheism*.

FRENCH, their Constitution of 1791, imperfect; in the attempt to destroy the inviolability of the Sovereign power, ii. 511, 12.

G.

GARRISON besieged, relieving; under what circumstances considered as contrary to the Laws of War, between the 11th and the 15th Century, i. 264-defending, punished by the Conqueror, *id.*-See *Generals*; *Prisoners*.

————— Origin of agreeing to surrender in case assistance does not arrive in a certain time, ii. 225, 6-Instances of; in the Siege of Brest in 1373; ii. 226, 9-Derval and Moissac; ii. 229-Harfleur in 1415; Bourdeaux in 1451; ii. 229.

GENERALS of the enemy when taken prisoners, how cruelly treated by the Romans, i. 189, 190. (See *Triumph*)-by the Goths, i. 223, 4-under the European Law of Nations from the 11th to the 15th Century, i. 260—263.

GENET, The French Republican Envoy to America; Case of his Renunciation of the Law of Nations, i. 161.

GENOA, Republic of, not allowed to rank with the Monarchs of Europe, ii. 449, 450.

GEOGRAPHICAL Situation of Nations, its effect, i. 137, 8; ii. 316.

GERMANS, Antient, their Predatory expeditions, i. 218.

GERMAN States confederation of, its basis the Golden Bull, ii. 274.

GERMANY, Emperor of. See *E*.

GIBBON, his praise of general toleration, how far just, ii. 9, 10.

GIFT, deed of, alienation of dominions of Sovereigns by; instanced in the case of Dauphiny, Arles, Thessalonica, ii. 263, 4. *n.*

GOLDEN

THE PRINCIPAL MATTERS. lxxvii

GOLDEN Bull, Regulations by, as to declaring War among the German Princes, ii. 210, 11-Basis of their confederation, ii. 274.

GOTHS ; See Scandinavians.

GOVERNMENT, coeval with the existence of Mankind, i. 21-Right of the People to overthrow, a pernicious maxim, i. 86 - Elective, vices of, i. 359.

GREAT Company, a Band of Mercenary Soldiers in the 14th Century, who rendered themselves independent, ii. 301—3.

GREEKS, Law of Nations as observed by, Chap VI. i. p. 171—184-Cause of their differing in Principle from the Romans, as to this Law examined, i. 195—200.

GREGORY VII. (Pope) founder of the Papal Usurpations, i. 344 ; ii. 86, 7 - his proceedings against the Emperour Henry IV. ii. 88—91. See Pope.

GROTIUS, his confutation of Carneades, i. 72 - inconsistency of his conduct with his Argument, on the Precedency of Nations, ii. 372, 3.

———— Founder of the present Regularity of the Law of Nations, ii. 604-Origin of his Treatise De Jure Belli & Pacis, ii. 614—616-why so called, ii. 622-his confinement and cause thereof, ii. 616, 17-his escape by the assistance of his wife, ii. 618 - her Character, ii. 617-Method he pursued in forming his work, ii. 618, 19-The Elector Palatine Charles Lewis, the first real patron of his treatise, ii. 620-Opposition to its tenets, ii. 620-unsuccessful, ii. 621-Works of Puffendorf and Vattel founded on his Treatise, ii. 622—5-defects of that Treatise, ii. 622, 3, 4.

GUELDRS Duke of, his good faith, as a Knight, on his Capture, ii. 186—8.

GUESCELIN, Bertrand du, his surrender as Prisoner of War, i. 304. n.-his Ransom, i. 306 ; ii. 166—8 ; 180 ; 204-Capture of his Brother by Thomas of Canterbury during a truce, i. 312—314 ; ii. 168 - his Separation with De Calverley,

lxxviii ALPHABETICAL TABLE OF

Calverley, his Brother in Arms, ii. 202, 3. See Chivalry.
Leader of the Companies, ii. 309 - his cruelty to Avignon and the Pope, ii. 309.

GUISE, Duke of, his infraction of the Law of Nations, i. 145.

GYLLENBURG, the Swedish Ambassador in England, his Case, ii. 548, 550.

H.

HAIR, deprivation of, a sign of disgrace, i. 247.

HALE, his opinion as to the privileges of Ambassadors under the English Law; examined, ii. 534, 5 : 540, 1, 2, &c. 553.

HANSEATIC League, remarks on the nature of, ii. 276, 7-

The Association artificial, ii. 277-The members of it in general not independent, ii. 277-Originally formed for commercial purposes, ii. 277-Cities that composed the alliance, ii. 278-singly dependent, but collectively independent ii. 279 - extended its views to Sovereign power, ii. 279-The question whether it was a Society of Merchants, or a Sovereign power, considered, ii. 280—290-how it arose, ii. 281-if not Sovereign, it exercised the rights of Sovereignty, ii. 282-Instanced in their war with Denmark in 1361, ii. 282-in the 15th century, ii. 283, 4-in various Acts of Sovereignty, ii. 285-in their treaties, ii. 286-particularly that of Utrecht in 1474; ii. 287—9-Its annihilation, ii. 290.

HAPPINESS the end of Moral Philosophy, i. 116—119.

HAROLD Duke of Wessex, case of his detention in Normandy, though driven on the coast by a storm, i. 269.

HASTINGS, Battle of, its consequences to England, i. 333.

HENRY II. of England, his affecting Appeal against his Sons to Pope Alexander, ii. 46.

—III. of England, his acceptance of the Crown of Sicily and Naples, for his Son, ii. 119, 120.

—IV. Emperour, his contest with Pope Gregory VII. ii. 88—91, *n.*

—VI. Emperour, his cruelty to the hostages in his power, i. 289-Interference of the Pope with, in favour of Tancred K. of Sicily's daughters, ii. 48.

HENRY

- HENRY VII. Emperor ; See Celestine III.
- HERACLIUS, his regard to the Christian Law of Nations and Religion, i. 231.
- HERALDRY originated from Chivalry, ii. 194.
- HERALDS, their rights enjoyed under the Law of Nations, i. 287-frequently disregarded in the period between the 11th and 15th Century, i. 286—288-the instruments of declaring war, ii. 207—9; 214.
- College of, among the Romans, i. 189.
- HIGH JUSTICE, Power of Life and Death, i. 356.
- HIGHLAND CHIEFS, were the last who possessed the right of Private War in Europe, i. 362.
- HILDEBRAND ; See Gregory VII.
- HOBBS, his Opinion on the State of Nature, i. 72. (See State of Nature) ii. 611.
- HOLLAND, when first allowed to rank among the Monarchies of Europe, ii. 451.
- HOMAGE, Ceremony of, degrading, when to be performed by independent Sovereigns, i. 371—374. See Kings.
- HOSPITALITY, Laws of, respected by many savage and ferocious Nations, i. 232, 3-enforced by the Christian Religion, ii. 13, 14.
- HOSTAGES, Prisoners of War considered as, i. 254—256-cruelties exercised towards, from the 11th to the 15th Century, i. 288—293.
- for Prisoners on Parole, ii. 180.
- HOWEL, his Arguments on the Precedency of Nations, ii. 380, n.
- HUMAN Sacrifices, among Savage Nations, i. 83-under Natural Religion, i. 103, 104, n.
- HUNGARIANS, their Law in favour of Strangers, ii. 13, 14-of Slaves, ii. 29.
- HUNS, their devastations of the Roman Empire, i. 212 ; 214 : 215-Fabled Origin of, i. 216.

lxxx ALPHABETICAL TABLE OF

I.—J.

JAMES, Son of Robert K. of Scotland, his detention by Henry IV. of England, i. 272, 310.

JERUSALEM considered by the Turks as defiled by the Christians, ii. 140.

Its defence, supposed to be the duty of every Christian, ii. 142, 6. See Crusades.

JEWS, though dispersed over the earth, yet retaining some characteristic marks of a distinct nation, ii. 127—the abhorrence they were held in, and the persecutions they suffered, from the 11th to the 15th Century, ii. 127—130 and n.

INCESTUOUS MARRIAGES, sanctioned by various Nations as not contrary to Natural Law, i. 75.

INEQUALITY of Mankind, principle of the Scandinavian Law of Nations, i. 209.

INFIDELS, right of conquering, in order to convert them, when part of the European Law of Nations, ii. 109—116—Treaties with, i. 167. See Treaties.

INGELRAM DE NOGENT, his case, how applicable to the question of the Inviolability of Sovereigns, ii. 594.

INNATE Knowledge of Right and Wrong, how connected with Conscience, under Natural Law, i. 89.

INNOCENT IV. (Pope) his contest with Frederick II. and the decision of the first Council of Lyons thereon, ii. 59—71.

INTERDICT of the Pope, its effect in enforcing Treaties, ii. 54.

INVIOLABILITY OF AMBASSADORS, fully considered, ii. 486—564.

In the case of Leslie, Bishop of Ross, Ambassador of Mary Q. of Scots, ii. 486—492—Opinion of the English Civilians thereon, ii. 487—490: (wherein of, Ambassadors, procuring Insurrection, ii. 487, 8 - of a deposed Prince, ii. 488 - of a Prince detained, ii. 488, 9 - forbidding an Ambassador,

THE PRINCIPAL MATTERS. lxxxii

dor, ii. 489, 490 - an Ambassador's abetting Treason, ii. 490.)—This opinion disputed, ii. 492; 539.

INVIOLABILITY OF AMBASSADORS, two-fold; as to their protection and privileges; and their exemption from the civil and criminal laws of the country they are sent to, ii. 493, 4-considered, ii. 494, 5-Examples of, and consequences of the violation of this right, ii. 495—7-how such violation is punished, ii. 503, 5.

Rule of, in Civil matters; to bestow every privilege the want of which would interfere with the purposes of the Embassy, ii. 497-extended to his suite, *ib.*-not unjust, because known, *ib.*-in England, under *Stat. 7 An. c. 12*; ii. 498-Origin of that Act, ii. 499-Observations on, ii. 501—3-Case of Phil. Weiseman and a Danish Ambassador, ii. 503—5.

In Criminal Cases,

ii. 506 - Reasonings on, ii. 507. (See Inviolability of Sovereigns) - confined solely to exemption from the jurisdiction of the tribunals of the country where he resides as Ambassador, ii. 515; 545-Reasons thereof; from his character, and the freedom necessary to the exercise of his powers, ii. 516—519-Authors in support of this position, ii. 519 and *n.*—521.

Practice of Europe in

favour of, ii. 521, &c.-Instanced in many cases: viz. Mendoza, the Spanish Ambassador to England in 1584, ii. 522, 3-L'Aubespine, French Ambassador three years afterwards, ii. 523, 4-Comte de Rochpot, French Ambassador to Spain in 1601, ii. 525-De Zuniga, Spanish Amb. to France under Henry IV. ii. 525-A Secretary to another Spanish Amb. in the same King's time, ii. 526-An Attendant of Rosny (Sully) French Amb. in England in 1603; ii. 526-Bedmar, Spanish Amb. at Venice, ii. 527-Inoyosa and Colonna, Spanish Amb. to England under Jac. I. ii. 527, 9-A Domestic of De Thou, French Amb. at the Hague, ii. 529, 530-One of the suite of a Spanish Amb. to France in 1666, ii. 530, 1.-De Bass,

f French

lxxxii ALPHABETICAL TABLE OF

French Amb. to Cromwell in 1654, ii. 531-Spanish Amb. to Charles II. of England, ii. 532-This right sometimes acknowledged even by the Turks, ii. 532-Reasonings on, by English Lawyers; Coke, ii. 533-Comyns, ii. 502, 534-Hale, 534, 540, 1-Foster, 540-2-examined, 542-5-Cafe of Don Pantaleon Sa, whether contrary to the above practice, ii. 535. See Ambassadors.

INVIOABILITY OF AMBASSADORS, as relates to States through which they pass, ii. 556-564-maintained by Vattel, ii. 556-On the Cafe of Rincon and Frigoze, Ambassadors of Francis I. of France, ii. 557-denied by all other authors, who hold that, very cafe not to be an infringement of the Law of Nations, ii. 558-560-and by many other cafes; viz. Saint André, Ambass. of Henry II. of France to Edward VI. of England, ii. 560, 1-Ambass. of Selim II. ii. 561-of the Republic of Poland, ii. 561, 2-of France to Scotland, ii. 562-of Venice to Great-Britain, ii. 562, 3-all detained, or commanded to depart, by States through which they passed-And of the Portuguese Ambassador to the States passing through England in 1641, ii. 563.

INVIOABILITY OF SOVEREIGN POWERS,

Principle of, ii. 507-necessity of, ii. 508-part of their very being, ii. 507-cause of their independence, ii. 510-512-considered in the cafe of a Public Functionary, ii. 508-514-If a radical, an incurable, defect in all Governments, ii. 509, 510-admits of no Judge, ii. 510-512-No *constitutional* remedy against, in England, ii. 510-or any where, ii. 510-512-Resource, in cafes of necessity, not in the *Law*, but in the *violation* of it, ii. 512, 13-Instanced in the English Revolution, ii. 513, 14. See R.

Cafe of Mary, Queen of Scots, considered at length, ii. 564-599. See M.

how this Inviolability in the cafe of a Monarch is affected by his residence in a foreign country, ii. 579-599-This question stated unfairly

THE PRINCIPAL MATTERS. lxxxiii

- fairly in the case of Mary Q. of Scots, ii. 577, 589-
 Opinion of the Civilians thereon, ii. 578, 9: 593, 4-exa-
 mined, 594, 6-Why it should not be allowed, ii. 596, 8.
- JOAN D'Arc, question as to her punishment, i. 262-her sur-
 render as Prisoner of War, i. 304, *n.*-Sale of, as such,
 i. 317.
- JOAN, Queen of Naples, case of her punishment, i. 260-How
 applicable to the question of the Inviolability of Sove-
 reigns, ii. 583.
- JOHN, King of England; effect of his being excommunicated
 by the Pope, ii. 39, 40. See Pope; Appeal; Chivalry.
- JOHN II. K. of France, price of his ransom, i. 299. See i. 314-
 his Crusade, ii. 146, 7-his Sentiments of Honour, ii. 175.
- ISIDOR, the Collection of the Decrees of General Councils
 attributed to him, forged, ii. 78, 9-The contents of that
 forged collection the foundation of the papal usurpations,
 ii. 82—84-The real author of this forgery not certainly
 known, ii. 85 and *n.*-its detection, ii. 86 and *n.*
- ITALIANS, cruelty of their Laws of War, from the 11th to
 the 15th Century, i. 245. 8.
- JUS ALBINATUS, a proof of the inhumanity of the early Law
 of Nations, i. 235.

K.

- KEEL-HAULING, Olaus - Magnus's minute description of,
 ii. 351, *n.*
- KINGS, distinction between them and Emperors, ii. 387-
 whence it arose, ii. 387—8-is really in favour of Kings,
 ii. 388-meaning of the term, ii. 388—390-Divided by
 Coke, into Independent or Paramount, and Homagers
 or Feudataries, ii. 390, 1 - Anointed and not anointed,
 ii. 406, 7-The title of Emperor assumed by many Kings,
 particularly of England, ii. 392—4-applied to Cromwell,
 ii. 394-assumed by the Monarchs of France, Spain and
 Russia, ii. 394, 5-No natural pre-eminence attached to
 either, ii. 395, 6. See Emperor of Germany.

LXXXIV ALPHABETICAL TABLE OF

KING, of the Isles of Wight, Guernsey and Jersey, Beauchamp, E. of Warwick, created by Henry VI. ii. 418.

Of Man, legally Royal, ii. 419 and *n*.

KNIGHTS and Knighthood. See Chivalry.

Their qualifications, ii. 159—161—Christianity one, ii. 161.

Degradation of, the ceremony attending, ii. 166, 7.

Dubbing or adopting, origin and ceremony of, ii. 188—191. See Chivalry.

Companions of the same order could not fight against each other without leave of the Sovereign, ii. 192.

Of Gratitude, ii. 206.

KNOLLYS, Robert, Lord of the Castle of Derval, his conduct in a case of *Sponsio*, i. 289—292.

K~~ρ~~*ων*~~ι~~*α*, or Secret Laws of the Spartans as to Slaves, i. 181, 225.

L.

LABEO, Q. F. his disgraceful quibble on the Capitulation with Antiochus, i. 192 and *n*.

LANGOBARDS, fabulous account of, i. 217.

LATERAN Council, (Third) decree of, against the slavery of Christians, ii. 31.

LAW OF NATIONS,

What it is; Cap. I. i. p. 1, &c. See p. 24, 25.

Characteristic distinction between that, and, the Civil or Municipal Law, i. 3, 32, 33 - not antiently well understood, i. 220 - instance of resemblance between those Laws, ii. 239, 240 - Whether it is merely the Law of Nature, or composed of positive institutions, i. 4 - Names of Authors *pro* and *con*. i. 4 - Summary of the arguments used to shew that it is merely the Law of Nature, i. 5—9 - The reasons for questioning those arguments, i. 9, &c. Particulars in which the Law of Nature and of Nations differ, i. 9, 13, 18, 19 - general distinctions between those Laws, i. 15, 19, 23.

THE PRINCIPAL MATTERS. IXXXV

In general, founded on custom, i. 22, 26-In cases without precedent, it may be said to be the Law of Nature, i. 24.
LAW OF NATIONS, Secondary, what, i. 29.

May be considered as the Law of Nature, modified by the Customs of Nations, i. 24, 25, 35.

Breach of, how remedied, i. 34, 193.

Principle of, according to Montesquieu, i. 36. See ii. 203.

See Law of Nature ; Religion (Natural.)

Foundation of, i. Cap. III.

Neither Natural Conscience nor Natural Religion can produce a certain universal Law, on which to ground the principle of a Law of Nations, for *all* the world, i. 20. See i. 36.

Effect of the Christian Revelation on this Subject, i. 120, 125. ii. 4—7. See Religion (Christian.)

Origin of the Obligation of the Law of Nations, i. 126.

Not the Law of *all* Nations, but of such classes as are united by similar religions or moral Systems, i. 127, 8: 137: 157: 162, 9: 199: 393, 5.

This proposition never before broadly advanced, i. 169.

In Europe and her dependencies, the moral System is founded on Christianity, i. 128; 162. See Religion (Christian.)

Not the Law of the World, Cap. IV. i. p. 131.

Manners of various Nations affect their intercourse with each other, i. 131, 2-Instances thereof, i. 132, 5.

The Laws of one class of Nations not to be applied to those of another class, i. 135, 7-Circumstances which cause such classes, i. 137, 8. ii. 474, 5, 6-Distinct classes have distinct customs, i. 139.

Effect of Religion and its Sects on this Law, i. 139—147.

ii. 466—477. See Religion (Christian)-of the Balance

of Power, i. 147-Hints of many writers, that the Law of Nations is partial, and not universal, viz. *De*

Callieres, i. 149-*Van Bynkershoek*, i. 150-*Vattel*, i. 150, 1-

Grotius, *Suarez*, i. 151, 2-*Burlemaqui*, i. 153, 5-*Montesquieu*, i. 156, 7.

lxxxvi ALPHABETICAL TABLE OF

LAW OF NATIONS,

How the different classes of Nations may be distinguished, Cap. V. i. p. 159; 160.

On the one hand, by their making treaties, entertaining embassies, deciding by one known settled Rule, using the same Customs and Religion, i. 160, 1 - or, on the other, by refusing to acknowledge authorities received by other States, i. 161, n.

Some Nations in a kind of twilight between two distinct Laws of Nations, i. 162, 3 - Such formerly were the *Turks, Russians, Poles and Prussians*, i. 163, 5 - Their accession to any distinct Law gradual, and generally by Treaty, as in the case of the *Porte*, and very lately of the *Barbary States*, i. 165, 8. See ii. 331, 2, 4—7.

History of, in Europe,

As observed by the Greeks and Romans, Cap. VI. i. p. 171 & seq. - Variation between them, cause of, i. 195—200 - as observed by the Scandinavians, Cap. VII. i. p. 201, &c.

From the fall of the Roman Empire to the 11th Century, Cap. VIII. i. p. 211. No known or settled Code of this Law during that period, i. 236.

From the 11th to the 15th Century, Cap. IX. i. p. 241.

An instance (perhaps the first) in which it was considered as a Science, i. 259.

Improvement of, Cap. X. i. 231—8. See Charlemagne.

_____ under the Christian Religion, arose directly from that Religion, and not from extraneous causes, ii. 6—11.

Influence of particular Institutions on; namely, the Feudal System; the Christian Religion; Chivalry; Treaties; Precedency of Nations; generally stated, Cap. XI, i. p. 239.

_____ by the Feudal System, Cap. XII. i. p. 337—395, See F. and ii. 231.

_____ by Christianity, and the Ecclesiastical Establishments, Cap. XIII. ii. p. 1. See Religion (Christian); and ii. 231.

THE PRINCIPAL MATTERS. lxxxvii

LAW OF NATIONS, *History of,*

Influence on,

—— by Chivalry, *Cap.* XIV. ii. p. 155—230. See Chivalry, and ii. 231.

—— by Treaties and Conventions, *Cap.* XV. ii. p. 231—358. See Treaties.

—— under Rank and Claims of the Nations of Europe, *Cap.* XVI. ii. 359—465.

History of, continued from 15th to 17th Century, Cap. XVII. ii. 466—605.

—— in the effect of the Lutheran Reformation, ii. 466—474—the enmity between the Mahometans and Christians, ii. 474—477.

As to Ambassadors, their Privileges and Immunities, ii. 477—564. See Ambassadors; Inviolability.

Imperfection of this Law, even during the last mentioned period, ii. 599—instanced in the case of Francis I. of France, ii. 599—601—in the rigour of the Laws of War, ii. 602—Causes of, ii. 603, 604.

In the Age of Grotius, Cap. XVIII. ii. 606, usque ad fin.

The term Law of Nations vague and indeterminate, ii. 606—Various opinions on, *ib.*—Confined by many to the Roman Civil Law, ii. 607—9—this calculated to lead nations into error, ii. 609—instanced in the debates on the restitution of Calais demanded in 1567, ii. 610—effect of this uncertainty, ii. 612, 13—Early Writers on the Subject; Albericus Gentilis; Balthazar Ayala, &c. ii. 613, 14. See Grotius; Puffendorf; Vattel.

LAW OF NATURE,

Divided by some, into absolute and hypothetical, i. 28, 30—

This method nugatory, i. 31, 2.

The Obligations of, *Cap.* II. i. p. 35—119.

Concerns either animate, or inanimate beings; the former governed either by instinct or reason; Man by both,

i. 41.

lxxxviii ALPHABETICAL TABLE OF

LAW OF NATURE,

Binding even on Atheists, i. 53, 94.

Unable of itself to produce a definite Law for all mankind, i. 35.

Universal and immutable in general principles; but various and uncertain in practice, i. 35, 40, 53, 56 & seq. 71 & seq. 87, 118, 119.

A few great principles, of universal stability, i. 71.

Whether particular moral duties are obligatory from the force of *natural law*, independent of the revealed commands of the Deity? i. 42, 57.

The Advocates for and against the above proposition, i. 42, 3-Summary of Arguments in support of it, i. 43—56-examined, i. 56 & seq.

The History of Man the only guide to this Law, i. 62, 9.

To be binding on *all*, must be *uniform* and *universally received* by mankind, i. 63—66; 87; 118, 119.

Crimes against the Decalogue held by Suarez to be crimes against the Law of Nature, i. 81-But committed by all Savage Nations, i. 81 & seq. See Adultery; Children; Parents.

This Law, (*as far as it concerns the particular Ramifications of Morality*) either does not now exist, or is so confounded with prejudice and custom, as to be no certain, satisfactory, and universal rule, i. 90, 91-and cannot therefore, in those ramifications, be obligatory upon *all*, i. 94, 95, 107. See ii. 337—340.

See Religion.

LEGATUS, an indistinct term to signify an Ambassador, or a Deputy of a Province, ii. 502, 609.

LESLIE (Bp. of Ross) see Inviolability of Ambassadors - his knowledge of the Law of Nations as to the Right of Ambassadors, ii. 491, 2.

LEWIS XI. his conduct to Charles the Bold, i. 277, 8 - his distrustful conference with Edward IV. i. 279 - his caprice in the ransom of a prisoner, i. 307. See Chivalry.

LICINIUS,

THE PRINCIPAL MATTERS. lxxxix

LICINIUS, his case how applicable to the Law of Nations on the Inviolability of Sovereigns, ii. 581, 2.

LIEGER Ambassadors, whence so called, ii. 184, n.

LINDESEY, See Redeman; Chivalry.

LOTHARIUS, King of Lorrain, his contest with the Pope as to his Queen, ii. 43, 4.

LUITPRAND, King of the Lombards, his respect for the Christian Religion, i. 231.

LUTHER, See Religion (Christian).

LYONS; why chosen for the holding the first Council there, ii. 61—See Councils.

M.

MACKENZIE, Sir George, his opinions on the Precedency of Nations, ii. 372, 5, 6: 442, n; 443, n.

MAHOMETAN RELIGION, its effect on the Law of Nations, i. 139, 145, 6: ii. 474, 475, 6. See Crusades; Treaties.

————— Principle of, to destroy its enemies, ii. 140, 1—how qualified, ii. 141, 2.

MAINFROY, natural Son of Frederick II. his cruelty to Prelates taken in War, i. 246.

MALMSBURY Lord; permitted to quarter the Arms of the Houses of Brandenburg and Orange, ii. 196. See Chivalry.

MAN, Isle, Kings of, ii. 419.

MARCOMIR, King of the Franks, case of his breach of Treaty with the Romans, i. 220.

MARGARET, Countess of Richmond, mother of Hen. VII. her zeal for the Crusades, ii. 148, 9.

MARRIAGE, Treaties of, their effect on the Law of Nations, ii. 241—256—small among the Nations of Antiquity and Infidel people of modern times, ii. 241—Rights of Females in the German and Scythian Nations, ii. 241—transfer of Empires by marriage nearly peculiar to Europe, ii. 242—Instances of, in the Kingdoms of the North and West, ii. 242—particularly in the Kingdom of Navarre,

ALPHABETICAL TABLE OF

Navarre, ii. 243-Duchy of Austria, ii. 243, 4-In Spain and Italy, ii. 244-France exempt from, by the Salic Law, ii. 244-extensive effects of, ii. 244, 5-by which treaties became necessary, ii. 245, 6-Instances of; on the marriage of John, K. of England, ii. 246-William, K. of Sicily in 1178, ii. 247-Philip of Flanders in 1193, ii. 247-Alexander, K. of Scotland in 1210, ii. 247-Charles VIII. of France in 1493, ii. 248-Indelicacy of these treaties, ii. 249-Treaties to prevent particular marriages, ii. 250-No general form prescribed, ii. 250.

MARRIAGES of Sovereigns by proxy, and why, ii. 251-Instance: Alphonso, K. of Leon in 1067, ii. 251-Consummation necessary, ii. 252-Ceremony of, by proxy, ii. 252, 3, and *n.*-Dissolution of, by divorce, ii. 254-6.

MARY, Queen of Scotland, case of her imprisonment and execution, examined, as a precedent in the European Law of Nations, ii. 564-599-her character by Knollys, ii. 508, *n.*

State of the case, ii. 564-571. Implications therefrom; that she was considered as an Enemy and as a real Sovereign, ii. 572-the pretext and plan of the Statute on which she was condemned, ii. 573-The reasoning adopted to justify it, ii. 574-6-Injustice of, ii. 576-Question and opinion by the Civilians on her case, ii. 577, 8. See Inv. of Sovereigns. Arguments on, ii. 578-580-Precedents relative to, examined, ii. 580-585. (See De-jotarus; Licinius; Conraddin; Robert, K. of Naples; Joan, Q. of Naples)-Morton's bold proposition to put her to death, ii. 585-Her defence, ii. 586-8-her designation, in the Record and Commission, ii. 588-the extent of the precedent established by her condemnation, ii. 590, 2.

MASSACRE of St. Bartholomew, styled a Remedy, ii. 473 and *n.*

MATILDA, of Scotland, case of her assuming the veil to secure her chastity, i. 244.

MERCHANTS, how regarded by the Antient English Laws,
ii. 344-their protection in an Enemy's Country on the
breaking out of War, ii. 356—8.

MONTPELIER. See Anjou, Albany.

MORAL Duties, how obligatory. See Law of Nature.

—— Philosophy, the whole of, explained in Puffendorf's
great work, ii. 623, 4.

MORAL Sense, confounded with prejudices, and not to be de-
pended on, i. 90.

MORALS what, i. 115. Every Institute of, universally intended
to produce happiness ; but the character of the institute
uncertain, i. 115, 116. Different customs may be equally
thought moral, if good is their proposed end, i. 117.

—— of Monarchs, interference of the Popes in regulating,
ii. 41—49.

MORALITY, Obligations of, under Natural Law, diversity of
opinions on, i. 71, 87.

MUTILATION, a barbarous Military punishment, in Europe,
from the 11th to the 15th Century, i. 248, 252.

N.

NAPLES, See Sicily.

—— Claim of Charles VIII. of France upon, ii. 263.

NATIONS, their different classes. See Law of Nations.

—— of Europe, their origin, i. 202.

—— Precedency of, i. 143 ; 331. See Post.

—— their interference with each other, Origin of,
i. 367, 8.

NATIONS OF EUROPE, Rank and Claims of, fully considered,
Cap. XVI. ii. 359—465.

The Subject, though apparently frivolous, difficult, ii. 359—
361-for want of a competent sovereign tribunal, ii. 361.

When equally independent, must originally be equal in
rights, ii. 362-Opinion of Vattel on this Subject, as to
the smaller yielding to the larger, *in priority of place*,
ii. 363-questioned, ii. 364, 5-Distinction between Equality
and

and Superiority, ii. 365-the latter asserted by States, even *ad rævim*, ib.-instances of, ii. 366, 7-between the English and Spaniards about 1600, ii. 367—9-reasonings of Sir Robert Cotton on, ii. 369, 370-examined, ii. 370, &c.

NATIONS OF EUROPE, Rank and Claims of,

Antiquity, one great ground of precedence, ii. 370, 1-seems the fairest claim, ii. 379-Priority of conversion to Christianity, ii. 371-denied by Grotius, ii. 371, 2-allowed in the ceremonial of the Pope's chapel and ecclesiastical assemblies, ii. 373, 4-Eminency of the Throne Royal, ii. 374-Nobility of blood in the Monarch, ii. 375-Antiquity of the reigning family, ii. 375, 9-supported by Mackenzie, having Scotland expressly in view, ii. 376. Weight and independency of the Nation; supported by Grotius and Vattel, ii. 377-allowed in the case of Cromwell, ii. 377, 8-other grounds of precedence, ii. 379—381-All these grounds uncertain, ii. 381.

Facts relative to; The uniform and uncontested pre-eminence of the Pope, ii. 381. before the Reformation, ii. 382-extended to his Ambassadors and the Clergy in general, ii. 384-particularly Cardinals, ii. 385, 6.

Next in rank, the King of Germany, Emperour of the Romans, ii. 386 (See Emperour of Germany; Kings)-The Turkish Emperour equal to him by express treaty, ii. 442, 463. yet not superiour to other Kings, *ib.*

Republicks held inferior to Monarchies, ii. 444-this principle unjust, ii. 445, 6. according to Vattel, ii. 451, 2-Reasons why it was adopted, ii. 446—9-Venice and Holland the only European Republicks now allowed to rank with Monarchies, ii. 449—451-England under Cromwell, ii. 452.

Minute points in the Ceremonial of Europe on this Subject, ii. 453.

France and Spain, contest between for precedence, ii. 454—462. cause of, ii. 454, 5 - first at Venice in 1558, ii. 455-at the Council of Trent, ii. 455—7-at the Congress of Vervins

- Vervins in 1598, ii. 457—at London in 1617, ii. 457—8—the most serious and celebrated, at London in 1661, which terminated in favour of France, ii. 458—461.
- Rank of other Nations undecided, ii. 463.
- Precedency of France next to the Emperor generally allowed before the Reformation.
- Equality of Crowned Heads now generally allowed in Europe, ii. 461, 4. first broached by Gustavus, ii. 462.
- NATURAL LAW. See Law of Nature.
- NATURAL RELIGION. See Religion.
- NATURE, various senses of the word, i. 63, 5—State of; See S.—Law of; See L.
- NICHOLAS I. Pope, his interference with Lotharius of Lorraine, ii. 43, 4.
- NOGARET; See Boniface VIII.
- NORMANS and Danes, their exacting tribute from other Nations, i. 221—their cruelty and insolence, from the 11th to the 15th Century, i. 244.
- NOTARIES appointing, a mark of Sovereign power, ii. 402, 3.
- NUNCIOS, Ambassadors of the Pope so termed, ii. 384—their precedence, ii. 386.
- NUNS, the respect antiently paid to them, i. 244.

O.

- OATH of the Pope and Emperour, not to assassinate each other, during the Coronation of the latter by the former, i. 276.
- OATHS, absolution from by the Pope, ii. 125.
- ŒCUMENICAL COUNCILS, i. 143—why so called, ii. 55—their constitution and origin, ii. 55, 9. See Council; Pope.
- ŒCUMENICAL BISHOP, who, and when first so stiled, ii. 81.
- ODIN, terrible description of that Deity, i. 207, 8.
- ODIN'S Hall, in Sweden, description of, i. 205.
- Palace, the Paradise of the Goths, i. 206.

xciv ALPHABETICAL TABLE OF

OJEDA, his ridiculous proclamation on the Invasion of America by the Spaniards, ii. 113.

OLERON, Laws of, as to Pilots and Shipwrecks, ii. 345—9.

OTHO, Emperour, the obligation to protect the Christian Church enforced at his Coronation, ii. 18.

OTTOMANS, See Mahometans; Religion.

OUTLAWS, right of protecting by a foreign State examined, ii. 319.—Treaties to render up, their principles and effect, ii. 318—320—Instances of, ii. 319, 320.

P.

PAPA, (Pope,) derivation of the Word, ii. 88. *n.*

PAIX BRISEE, what, and how punishable, i. 354.

PARADISE, notions of, entertained by the Celts and Scandinavians, i. 206.

PARENTS, inhumanity of Savage Nations towards, i. 81.

PARLIAMENT of Christendom, the Œcumenical Councils such in effect, ii. 59.

PAROLE, Liberty of Prisoners on, probable origin of, in Chivalry, ii. 179. See Chivalry.

PASQUIER, his account of the origin of the States-General in France, ii. 97. *n.*

PASTOUREUX or Shepherds, Crusade of, ii. 144—6.

PATER patratus, his office among the Romans, i. 185.

PAULUS Æmilius, account of his triumph, i. 191.

PAX Ecclesiæ, what and how religiously regarded, ii. 16—18.

PAYEN, Geoffry de, killed in hatred of his Commander Clifson, i. 297.

PERIGORD Cardinal, his humane interference to prevent the battle of Poitiers, ii. 51.

PFEFFEL, his account of the Author of the forgery of Isidor's collection, ii. 85, 88, *n.*

PHILIP King of Castile, case of his detention by Henry VII. of England, i. 273, 4.

PHILIP IV. of France. See Boniface VIII.

PILOTS, Laws of Oleron Regulating, ii. 345—9.

PIRACY

PIRACY held honourable among the Greeks, 177, and *n.*
ii. 340.

PIZZARO, instance of his injustice, i. 136.

PLATÆA, behaviour of the Spartans at the Surrender of,
i. 180, 3.

POINT OF HONOUR, what, and its influence, ii. 156—8.

POLAND, the Conduct of Russia and Prussia towards, not justifiable by the Christian Law of Nations, ii. 239.

POISON, and poisoned Arms, employed in European Wars from the 11th to the 15th Century, i. 252, 4.

POITIERS, battle of, i. 299, 302, 314; ii. 51, 2.

POLITICAL Freedom, in Europe, the Lutheran Reformation intimately connected with, ii. 467.

POPE of Rome; origin of his power, ii. 32—36—How he became Director of the affairs of Europe, ii. 37.

— His Excommunications, how they acquired force, ii. 38—in the case of John K. of England, ii. 39—effect of in the case of Peter of Bourbon, ii. 52—of the Emperour Henry IV. ii. 88—91. *n.*—in other cases, ii. 91, 122, 3, 4—how despised under the Lutheran Reformation, ii. 470.

— His interference, by mediation, advice, and correction as to the affairs and morals of Monarchs, advantageous, ii. 41.—Instances of, in the case of Theodosius, ii. 41—Lotharius K. of Lorrain, ii. 43—France and England, ii. 45—Henry II. of England, ii. 46.—Richard I. of England, ii. 47.—Henry VI. Emperour, ii. 48, 9—Simon Montford, ii. 49—Edward III. of England, ii. 49.

— in matrimonial causes, ii. 43; 254.

— His right of assembling Councils, ii. 58, 9—his power in and through them, ii. 59—77. See Councils.

— Origin of his power as to the deposition of Sovereigns; instanced in the case of the Emperor Frederick, ii. 59—71. See ii. 105. and *post.*

— Liable to be deposed by a General Council; instanced in John XXIII. and Eugene IV, ii, 77. See ii, 103.

POPE,

xcvi ALPHABETICAL TABLE OF

POPE, his Usurpations ;-origin and history of, ii. 77—125-the foundation of, in the forged collection of decrees attributed to Isidor, ii. 78. See Isidor-his power before the publication of that collection, ii, 79-Elected by the Emperors, ii, 79-when, and by whom first stiled Œcumenical or Universal Bishop, ii. 81-the Consecrator of Charlemagne and succeeding Emperors, ii. 81.

— These Usurpations systematically proceeded in, ii. 86-See Gregory VII. Celestine III.-when first extended to temporal concerns, ii. 92, 3. See Boniface VIII.

— his pretensions to be the sole disposer of Earthly Kingdoms, ii. 107-instances of, relating to Spain, ii. 107-Scotland, ii. 108-Ireland, ii. 108—110-Venice, ii. 110-America, ii. 111—116-Sicily and Naples, ii. 116—124-France and Arragon, ii. 122, 3 -these pretensions disputed by Protestants after the Lutheran Reformation, ii. 471-but still supported by the Catholicks, ii. 472—4,

— The sole Casuist of Catholicks in Christendom, and absolver from Oaths, ii. 124, 5 ; 473 ; 601.

— Crusades an Engine of his Power, ii. 150—3.

— His precedency among the Sovereigns of Europe, ii. 381—6.

POPES and Emperors, their mutual jealousies, i. 276. See i. 386, Oath.

POSTHUMUS, case of his capitulation with the Samnites, i. 186.

POSTLIMINIUM right of, what, i. 174. n.

PRIMI BARBARORUM, the Russians and Poles so termed, i. 163.

PRISONERS of War-Eaten by Savage Nations, i. 85, and n.-cruelties of the Druids towards, i. 206-of the Slavonians, Thuringians and Avars, i. 216-Romans, i. 189, 190. (See Triumph)-Goths, i. 223, 4-of the Italians, i. 246.

— Considered as Hostages, on whom to retaliate the cruelty, and by which to enforce the compliances, of the Enemy, i. 254—6.

PRISONERS,

THE PRINCIPAL MATTERS. xcvii

PRISONERS, how unjustly treated under the European Law of Nations from the 11th to the 15th Century, i. 272; 316, &c.

—— Belonged to those to whom on being taken they gave their faith (faye) i. 303, 4-Rescued or not rescued, ii. 183, 4-Instances of; the case of Thomas Vercler, ii. 184-Even though the Captor was afterwards taken; the case of Matthew Redeman an English Knight, prisoner to James Lindefey a Scottish Knight, ii. 184—6-of the Duke of Gueldres, prisoner to Avrant, a simple Esquire, ii. 186—8.

—— Slavery of, See Slavery; Ransom of, See Ransom; Parole; Chivalry.

PRIVATE War, See Feud (Deadly).

—— Origin and conduct of, examined, i. 293—297; i. 343. n.-the most valuable right of an antient Baron, i. 340, 1-causes of, among the antient French Barons, i. 348-forms of declaring, i. 351, 2-mode of terminating, i. 355-by taking bonds of assurance, i. 355, 6-inefficacious, i. 357-by Duel, i. 357-In Germany, i. 359-In Spain, i. 361-In Sweden, *ib.*-In the Northern parts of Great Britain, i. 362—5-Among Ecclesiasticks, in consequence of their possessing Baronies, i. 365-Refrained by the Christian Religion, ii. 15. & *seq.*

PROTECTION, Treaties of, their effect on the European Law of Nations, ii. 265—8-instanced in the case of, the Isle of Man in 1205 and 1212; ii. 266-Genoa, in 1458, ii. 267-Holland, ii. 268.

PROTESTANTS. See Religion (Christian.)

PRUSSIA, its erection into a Kingdom, history of, stated and examined, ii. 410—414.

PRUSSIANS, their Accession to the European Law of Nations, i. 164, 5-their Conversion to Christianity, ii. 150.

PUCELLE, See Joan d'Arc.

PUFFENDORF, cause and nature of his work on the Law of Nature and Nations, ii. 623, 4-its excellencies and defects, ii. 624, 5.

xcviii ALPHABETICAL TABLE OF

PUTTER, his account of the forgery of Isidor's collection of Decrees and its detection, ii. 85, 86. n.-his Remarks on the peculiar situation of the K. of Bohemia considered, ii. 416—419.

Q.

QUIVETAINE, See Chieftain.

R.

RANSOM OF PRISONERS, Origin, Instances and Consequences of, from the 11th to the 15th Century, i. 298—320—Rules of, i. 299—Privilege of Sovereigns as to the Ransom of Prisoners taken by their Generals, &c. i. 299; 301; 307—Optional in the Captor to ransom or not, i. 301—Political reasons preventing ransom, i. 301, 2—See ii. 166, 7—Who intitled to receive the ransom, i. 303—Mode of estimating generally one year's Revenue, i. 304, 305. n.—See ii. 171, 2—by personal Consequence, i. 306, 7—Capricious, i. 307—by the Prisoner himself, ii. 167—Effects of Ransom; advantageous, i. 308, 9—and disadvantageous, i. 309—315—Value of Ransom transferable, i. 316—320—as a present, 318—Effect of the Prisoner's death in such case, i. 318—of the Captor's death in case of parole given to the Prisoner, ii. 182—of the death of a Prisoner exchanged, ii. 183—Securities for Ransom, i. 318—Release of a Prisoner on parole to obtain his Ransom, See Chivalry.

RAOUL, Comte d'Eu case of, being an English Prisoner returning to France on his parole, and there executed, i. 282, 4—Villaret's opinion of it, See Villaret.

REASON, that faculty which teaches to draw conclusions, not to ascertain premises, i. 60—63; 91, 2. n.

——— No obligation on man (exclusive of Religion) to abide by its dictates, i. 95. See Religion;—Law of Nations (foundation of)

REDEMAN Matthew, an English Knight, case of his good faith as prisoner to Lindesey, a Scottish Knight, ii. 184—6.

REFOR

REFORMATION. See Religion (Christian).

RELIGION, its effect in uniting men and Nations, ii. 33 ;
154. See *post*.

———— NATURAL, the Principles of, i. 95—98-Objections to, i. 98-its obligation not universal, i. 99—102, 113, 114-disgusting varieties and inconsistencies of Natural Religions, i. 103—107-even in civilized life, i. 107—113.-(See Morals)

———— CHRISTIAN-Probable reasons for its Revelation, i. 120, 123. n.-its effect on the Law of Nations, i. 125 ; 140—146 ; 172 ; 230, 231, 6 ; i. 334.-ii. 1, &c. See *post*-extended by Charlemagne, i. 322-its effect in tending to slavery, i. 228—230.

———— influence of that, and the Ecclesiastical Establishments on the European Law of Nations, from the 11th to the 15th Century-Cap. XIII. ii. p. 1—154.

The conduct of Christian Nations superiour in Regularity and benevolence to all others, ii. p. 2-compared with the Greeks, 2 - Romans, 2, 3-Carthaginians, 3 - Mahometans, 3 - Chinese 4.

Causes of its inefficiency in Regulating this Law during those Centuries, ii. 4—7.

Its effect, in softening the manners, ii. 11-in favour of Strangers, ii. 12—14-by opposing private war, ii. 15, &c. in inculcating a Reverence for places of worship, ii. 16—18-for particular days, ii. 19-establishing the Truce of God, ii. 21, &c. See T.-the Brotherhood of God, ii. 24, 5 - See B.-abolishing Slavery, ii. 26. See S.-exempting Christians from Slavery, ii. 31.

Its most remarkable effects arose from the form of its Church-Government, ii. 31, 2-which caused the various nations to coalesce in one great bond of union, ii. 36-and supplied a common tribunal among Sovereigns, ii. 37—40-Advantages of such a tribunal, ii. 40, 1-See *Councils, Pope*.

C ALPHABETICAL TABLE OF

RELIGION, CHRISTIAN, Its abuses, by the Usurpations of the Pope, ii. 77, &c. See Pope.

Its extension, a pretext for conquest, ii. 109; 111—116; 126-Instances of, in the conquest of Ireland by K. Henry II. ii. 108-of America; by the Spaniards, ii. 111—114-by K. Henry VII. ii. 114-by Q. Elizabeth and K. James I. ii. 115.

Its influence on the States of Europe as to Nations in other quarters of the World, and of a different Religion, ii. 125—153-the Jews, ii. 126—130-(See J.)-Infidels, ii. 130-instanced in the Crusades against the Turks, and Saracens or Moors, ii. 131—150. See Crusades.

General Recapitulation-on the whole Christianity as injurious perhaps to this Law in its corruptions, as beneficial in its purity, ii. 153, 4.

Its Reformation under Luther; effect of, in changing the affairs and public opinions of Europe, ii. 466—474-introducing political freedom, ii. 467-dividing Europe into Catholic and Protestant Nations, ii. 467—9—who formed distinct alliances, ii. 469, 470—though united against, and equally despised by, the Turks, ii. 474—6.

RENUNCIATIONS of Kingdoms, i. 369 - Treaties for, the principles of, ii. 268—270-instanced in the case of the kingdoms of France and Navarre in 1316; ii. 270, 1-of France by the Treaty of Bretigny, ii. 271.

REPRISALS, within the Law of Nations, i. 294-Private, their effect, i. 294, 6.

REPUBLICKS considered as inferior to Monarchies in the Precedence of the Nations of Europe, ii. 444, &c. See Nations of Europe, Rank and Claims of.

REVOLUTION in England, conducted constitutionally by the English, but not by the Scotch, ii. 513, 514.

RICHARD I. of England, instance of his Magnanimity, i. 261-case of his detention and imprisonment by the Duke of Austria, and being sold to the Emperor; not perhaps

THE PRINCIPAL MATTERS.

ci

- perhaps contrary to the then existing Law of Nations,
i. 270—2; 310 - Sold to the Emperor, i. 316.
- RICHARD I. Interference of Pope Innocent III. in his favour,
ii. 47.
- His cruelty to the Saracen Prisoners at the Cap-
ture of Ptolemais, ii. 138, 9.
- RICHLIEU, Cardinal, case and cause of his detaining the
Electoꝛ Palatine, i. 274. n.-ii. 313.
- RIGHT, definition of, i. 117.
- ROBERT, King of Naples, his case, how far applicable to
the question of the inviolability of Sovereigns, ii.
583—5.
- ROBERTSON, Dr. some observations as to Private War,
escaped him, i. 153, 6.-as to Slavery, ii. 31-and par-
ticularly as to the account of the Imperial title, ii.
Ch. XVI. 396—442.
- ROLLO, his insulting mode of doing homage to Charles the
Simple, i. 373.
- ROMAN Empire, Ruin of, i. 212.
- ROMANCE, whether it may be quoted as Authority, ii.
194. n.
- ROMANS, Law of Nations as observed by, Cap. VI. i. 184,
&c.
- Cruelty of their Triumphs, i. 189—191.
- Chicanery, of their Treaties, i. 191—193.
- Their praise-worthy Conduct to Conquered Na-
tions, i. 194.
- Their Principle of Action, Origin of, i. 195, &c.
- ROME, Bishop of. See Pope,
- ROWTERS, Soldiers of Fortune, ii. 299.
- RUSSIAN Empire, its accession to the European Law of Na-
tions, i. 163, 4; 168.

S.

- SA, DON PANTALEON, his case, as to the privilege of
Ambassadors, fully stated and commented upon, ii. 535.

cii. ALPHABETICAL TABLE OF

- SABBATH-breaking, punishment of, between the 11th and 15th Centuries, ii. 19, 20.
- SAILORS, private, quarrel between a Norman and Englishman the cause of a dreadful war, i. 295.
- SALADIN, Summons of the Emperor Frederick II. to, previous to the second Crusade, and his answer, ii. 134, 5—his behaviour to the Prince of Antioch his prisoner, ii. 137—to Chatillon, ii. 142.
- SALE of Dominions by their Sovereigns, in what cases allowable under the European Law of Nations from the 11th to the 15th Century, ii. 256—8—Instances of, in the Marquisate of Lusatia by Theodoric, Landgrave of Thuringia, in 1301, ii. 258, 9—City and Territory of Mecklin in 1333, ii. 259—City and County of Lucques, *ib.*—Sovereignty of Frankenstein. *ib.*—Avignon to the Popes, ii. 260—Mortgage of the Duchy by Robert Duke of Normandy, ii. 260—Sale of Reverfionary Interest instanced in Brittany, purchased by Lewis XI. and Constantinople by Charles VIII. of France. ii. 261, 2. See Bequest; Gift.
- SALIC Law in France, one favourable effect of, ii. 244.
- SALVAGE, Law of the Danes to regulate, probably the first public Constitution on the subject, ii. 343.
- SARMATIANS, the parent nation of the Goths or Scandinavians, i. 202.
- SAXONS, their Laws to encourage hospitality, ii. 14—16—As to Religion, See Church—Against slavery. ii. 28.
- SCANDINAVIANS, principle of their Law of Nations, i. cap. VII. p. 201, &c. Reason of, deduced from their religion, i. 208—210—their predatory expeditions. i. 218—their treachery in making treaties, i. 219.
- SCOTCH, Customs of, war, their cruelty from the 11th to the 15th Century, i. 245.
- SHIPWRECK, Laws of Oleron relating to, ii. 346, 9.
- SICILY and Nap'les, revolutions of, and how disposed of from time to time by the Popes, in virtue of their as-

THE PRINCIPAL MATTERS. ciii

- sumed supremacy, ii. 116—124—viz. by Pope Nicholas II. ii. 117—Innocent III. ii. 117—Innocent IV. ii. 118—Alexander IV. ii. 119—Urban, ii. 120.
- SIGISMOND**, cruel execution of, with his wife and children, i. 224.
- SINTO**, Religion, i. 109
- SLAVERY**, Christianity most powerful means of abolishing, i. 225, 6. ii. 26—though not positively forbidden by the New Testament, ii. 27—Objections to its abolition, ii. 27, 8. See Ransom.
- of Strangers, i. 73, 74, 173, 6. See Strangers.
- among the Greeks, dreadful circumstances attending, i. 181.
- of Captives in War, i. 10, 216, 298. (See Prisoners of War.)
- the instrument of political advantage, as well as private wealth, previous to the 11th Century, i. 225.
- SLAVES**, distinct classes of, i. 226—their low estimation as to moral worth, i. 227; enfranchisement of, i. 229, and *n.*
- SMITH**, SIR THOMAS, his observation on Slavery, ii. 30.
- SOCIETY**, coeval with the existence of mankind, i. 21. See Government.
- SOLDIER** no one can be, without a commission, i. 187.
- SOLDIERS** of Fortune, their origin, i. 311. ii. 299.
- SOVEREIGNS**, Obedience to, under Natural Law, i. 55, 86—Protectors of the Christian Religion, ii. 18.
- Independent; cause and effect of the jealousies subsisting between them, i. 275—280—Ransom of, i. 305, and *n.*—Feudal Connections between, prejudicial to their independence, 370, 371, 4, 6. See Appeal.
- Their inviolability, ii. 507—514—No constitutional remedy against, ii. 510, 512. See Inviolability of S.
- SOVEREIGNTY**, what constitutes, i. 393, 4. ii. 509.—Inviolability, part of its very being, ii. 507—512. See Inv.
- SPONSIO**, Case of Posthumus and the Samnites referred to, i. 186—Case of Robert Knollys, i. 289, 292.
- STATE** of NATURE, what it is, i. 6.—whether it ever existed? i. 21.—first considered as the foundation of a system of Law, by Hobbes, i. 5.—Origin of the theory of, i. 5, 6, 80.

civ **ALPHABETICAL TABLE OF**

STRANGERS, how hostilely considered by the Greeks and Romans, i. 173, 176, 182—(See Hospitality)—by the Welsh, i. 235.—under the Feudal System, i. 234, 5—By the Nations of Europe from the 11th to the 15th Century, i. 268, 274.—This temper softened by the Christian Religion, ii. 12, &c.

SUAREZ (See Law of Nations) - his opinion of the cause of the abolition of slavery, ii, 29—his writings not noticed by Grotius, ii, 614.

SUBSIDY, Treaties of, their influence on the European Law of Nations, ii. 295—314-Origin and principle of, ii. 295, 6. Early instances of, by Henry I. of England in 1101; ii. 296-King John, ii. 297.-Philip le Bel of France, ii. 297. Edward III. and Philip de Valois, ii. 297-Charles V. of France, ii. 298.-Originated from Chivalry, ii. 298, 9-Policy and propriety of, considered, ii. 300, 1-Consequences of, see Great Company; Companies.

SUCCARIA, seemed well to understand the Law of Nations as a science, i. 259: ii. 582. *n.*

SUMMUM BONUM, Definition of, i. 116.

SUPREME Power in a State, See Sovereignty.

SWEDES, Law of, to relieve in cases of shipwreck, ii. 342.

SWISS Confederation, particulars of its rise and progress, ii, 274—6 - Subsidizing of their soldiery, ii. 299, 300.

T.

TAMERLANE, the dreadful slaughter made by, in his wars, i. 215.

THADDEUS of Sueffa, Advocate for the Emperour Frederick II. at the first Council of Lyons, his conduct and character, ii, 62, 3, 5, 8.

THEODOSIUS, his division of the Roman Empire; the cause, at least the signal, of its destruction, i. 212, &c.-Reproved by Ambrose, Archbishop of Milan, ii. 41—43.

THOMAS of Canterbury, his capture of Du Guescelin's brother during a truce, not acted upon as a violation of the then Law of Nations, i. 312—314.

TOURNAMENTS, introduced by the Emperour, Henry I.
ii. 161.

TREASON, injustice of considering foreign enemies as guilty
of, i. 183—in vassals, i. 375, 6.

TREATIES, their effect in supplying the place of general
maxims of justice, i. 237—Reasons why the Barbarians
who destroyed the Roman Empire could not profit by
Treaties, i. 237, 8—during the middle ages chiefly ec-
clesiastical, i. 239, 240—their observance enforced by the
Pope's interdict, ii, 54.

———— annulled by the Pope's bull, excommunicating the
Sovereign who made them, ii. 104.

———— their influence on the Law of Nations in Europe
from the 11th to the 15th Century, *Cap. XV.* ii.
p. 231—358—generally stated, ii. 231—240.

———— their influence in the alienation of Sovereignty
and Dominion; by Treaties of Marriage, ii. 241. (see M.)
of Sale, ii. 256. (see S.)—by Bequest—(see B.) and Deed of
Gift (see G.) ii. 263.—by Treaties of Protection, ii. 265.
(see P.)—Renunciation, ii. 368. (see R.)—Confederation,
ii. 272. See Confederation, and the references there.

———— Auxiliary, their effect, ii. 291.—of Subsidy, ii. 295.
of common cause, ii. 315.—to render up outlaws, ii. 318.
with Powers not Christian, ii. 321.—respecting commerce,
ii. 337. See A. S. O. C.

———— What is meant by the Term; all *Deeds* which
settled any uncertainty or difficulty, ii. 231, 2.—unknown
to barbarous nations, and why, ii. 233.—Causes which
increased written Conventions after the 11th Century,
ii. 235.—Effect of such Conventions, ii. 235, 6.—Various
sorts of, ii, 236.—How far the particular rights settled
by Treaty are the result of the Law of Nations,
ii. 236, 7, 9.—No positive Institution or Convention law-
ful, according to the Christian Law of Nations, if con-
trary to the principles of Christian Morality, ii. 237—9.

TREATIES with Powers not Christian; prejudices against, ii. 321, 2.-Grotius's opinion on, ii. 322, 4.-Coke's, ii. 325, 6.

— not entirely of modern growth, ii. 327-arose from positive necessity, first in the case of Christians and Saracens, ii. 327, 8 - and political interests; as in Spain with the Moors, ii. 328, 9, *n.*-between Saracens and Christians, instanced in the Treaties made by the Kings of Sicily, ii. 330.-Emperour Frederick II. ii. 330;-with Abussac King of Morocco, in 1230; ii. 331, 2;-between the Christians and Mussulmen in the East for mutual aid against their own brethren, ii. 332, 3;-between the Caliph of Ægypt and King of Jerusalem, in 1166; ii. 333.-Pope Lucius III. and Saladin in 1185.-*ib.*-the latter and Guy de Lusignan, King of Jerusalem, ii. 333, 4.-King of Naples, Pope Alexander VII. and Bajazet, ii. 334.

— with the African States, a peculiar instance of the power of Convention on the Law of Nations, ii. 334, 5.-with Algiers in 1686, some articles of, ii. 335, 6.-Tripoli and Tunis in 1751, ii. 336.

TREUGA DOMINI; what; and why instituted, ii. 21.-enforced by Laws and Conventions, ii. 22, 23.

TRIBUTE exacted by the Northern hordes under their Law of Nations, i. 218, 220, 1.-by the Danes and Normans particularly, i. 221.

TRINITARIANS, Christians designated by this term, ii. 141.

TRIUMPHS of the Roman Generals cruel and ungenerous, i. 189.

TRUCE of the Lord, See *Treuga Domini*.

TRULLANEAN Council, whence so called, ii. 128. *n.*

TRUTH, Obligation to, under the Law of Nature, i. 86.

TURISUND, King of the Gepidæ, instance of his generosity towards *Alboin*, i. 233.

TURKISH EMPIRE, its accession to the European Law of Nations, i. 163, 166, 8.

TURLUPINS, i. 109.

TZAR, See *Czar*.

VASSALS,

THE PRINCIPAL MATTERS. cvi

U.—V.

VASSALS, how affected by the private wars of their Lords,
i. 353—Restrained from Marriage without consent of
their Lords, i. 369—Instances of, in the Count of Pon-
thieu and Duke of Burgundy, i. 369, 370—Vassal to one
Lord might be Lord Paramount to other Feudatories,
i. 375—Privileges of Vassals, i. 387, 8; 393, 4.

VATTEL, his opinion on the precedency of Nations ques-
tioned, ii. 363—his Reasoning on the Inviolability of
Ambassadors, in States through which they pass, how
far supported by Cases, ii. 556—564—his opinion as to
Mary Q. of Scots questioned, ii. 592—Cause and nature
of his work, ii. 625, 6—its excellencies and defects, ii.
626, 7.

VELLY Abbé, his account of the origin of the Brotherhood
of God, ii. 25.

VENICE, See Doge.

—— Republic of, when and why permitted to Rank with
Sovereigns, ii. 449, 450.

VENETIANS, why they receive Resident Embassies, ii. 481.

VIBIUS VIRIUS, his execration of the Roman Triumphs,
i. 190.

VIDAME, office and origin of, i. 266.

VILLARET, his reasoning on the Law of Nations, i. 281, 2.
On the Subject of Ransom, i. 299, 300.

VIRTUE, definitions of, i. 118, 119.

UNAM SANCTAM, the Bulle, so called, its origin and effect,
ii. 98.

UNITARIANS, Mahometans so called in Contradistinction to
Christians, ii. 141.

VOLTAIRE, his account of the Erection of Prussia into a
Kingdom examined, ii. 409—414.

USURY, not against Natural Law, i. 85.

W.

WALLACE, Sir William, his execution disgraceful to the
age he lived in, i. 261.

WAR,

CVIII ALPHABETICAL TABLE, &c.

WAR, Legitimate, what? i. 12, 13; 187; 294; 339; 340; ii. 206, 8.

— Laws of, among the Greeks, their cruelty, i. 178, 184.

— Romans, i. 184. *& seq.*

— from the 11th to the 15th Century, Cap. IX. i. 264, &c. See Prisoners; Slaves.

— how improved under the institutions of Chivalry, ii. 165; 178.

— formal declarations of, ii. 206, 8. See Chivalry.

— Private (See P.)

WARWICK, Earl of, the King-maker, his power, i. 363, 4.

WEISEMAN, Phil. Case of, on the violation of the Privilege of a Danish Ambassador in England, ii. 503—5.

WICQUEFORT, his *Treatise de l'Ambassadeur*, cause of his writing, ii. 519. *n.* his proposition, denying the Sovereignty of the Hanseatic League examined, ii. 280—290.

WIGHT (Jersey and Guernsey) Isles, Kings of, ii. 418.

WINGS, (The) an old Romance, so called, ii. 162.

X.

XANTRAILLES and Talbot, their mutual generosity, ii. 171. See Chivalry.

XERXES, instance of his Magnanimity, i. 176. *n.* cause of his Anger against the Athenians, ii. 496.

Z.

ZIZIM, brother to Bajazet, Case of his Capture and transfer under the then Law of Nations relative to Ransom, i. 319.

ZOUCH, a position of his as to the Inviolability of Sovereigns, examined, ii. 594—6.

THE
FOUNDATION AND HISTORY
OF
THE LAW OF NATIONS,
IN
EUROPE.

CHAP. I.

WHAT THE LAW OF NATIONS IS.

IF we look through the history of Man, we shall scarcely be able to find an instance of two or three of the species being gathered together into society, without the observance of some Law.

The necessity for Law in general, drawn from the nature of mankind, and their analogy with other parts of the Creation; if not a self-evident truth, has been so well demonstrated by a number of respectable writers, that it would be unnecessary to give the discussion a place in this work. But the *founda-*

2 WHAT THE LAW OF NATIONS IS.

tion and structure of Law ; particularly of that part of it which we propose to ourselves as a subject of enquiry ; are questions about which there has been so much difference of opinion, but which it is yet so essential to understand with precision, that it will be right to examine them with care and attention.

The Sum of Mankind may be said to be composed of independent Nations, Families, or Individuals ; and the Laws which govern them may be viewed under two relations ; Either as they concern the *Interiour* of those Nations, or Families, to be observed by their different component members ; Or as they concern them in their *Exterior* ; that is, in their conduct towards one another in their collective capacity ; not as *Individuals*, but as *Nations*.

The first of these we call the CIVIL or MUNICIPAL Law ; as prevailing in a particular State, City, or Body Corporate ; the last, we call the Law of Nations ; as prevailing among the different Nations which, together, make up the whole of the world.

The difference between these two Laws is remarkable.

The one, whether it takes its rise from the will of each Individual, signified in formal Convention to each other; or whether it proceeds from mere Custom, the date and origin of which no man can tell; has always some common *Sovereign Tribunal* to expound its meaning and enforce its decrees. The other has no Tribunal whatever; no Judge to appeal to but the rest of mankind.

The consequence is such as might naturally be expected; the one is for the most part, well understood, and uniform in its operations; the other is often unsettled in its principles, and as to its operations, generally uncertain.

To settle therefore, as far as a thing so fluctuating will permit, the true *foundation* of this remarkable Law; what it is that renders it binding upon mankind; the changes to which it is liable; and the causes of those changes; is the ultimate object of the work before us. To enquire into its form and ap-

4 WHAT THE LAW OF NATIONS IS.

pearance, is the immediate scope of the present chapter. The Subject is by no means without difficulty, notwithstanding the volumes that have been written upon it; and the question, What constitutes the Law of Nations, or how it is that it obtains? has been as differently answered, as it has been frequently put. Upon the whole however, the great points of difference concerning the mode of its structure, seem to turn upon this; Whether the Law of Nations is merely the Law of *nature* as it concerns man, *and nothing more*; or whether it is not composed of certain *positive Institutions* founded upon consent.

The Lawyers and Philosophers of antiquity; the Oracles of the Digest; and in modern times, *Hobbs*, *Puffendorf*, *Burlemaqui* and others, (a) support the first opinion. *Suarez*, *Grotius*, *Huber*, *Bynkershoek*, and in general the more recent authors, declare for the last.

(a) See much learning upon this in Taylor's Civil Law, from Pa. 99 to 132. Quarto Edition.

The manner in which the first set of writers account for their sentiments, is by erecting that famous Theory, by which Man in his origin is considered in a state of the most savage independence; an inhabitant of woods like the beasts of the Earth; like them the possessors of a solitary den, and like them, attending to no calls but those of appetite.

This uncouth, but interesting picture arose first perhaps in the imaginations of the Poets, (not improbably of those who united legislation with poetry,) and from them was eagerly adopted into more regular Systems of Jurisprudence. Accordingly, no mode of expounding the Spirit of Laws and Government, has been more common than that which traces every thing up to the Creation of Man; or, in other words, to Man, as it is called, in a *State of Nature*. This Theory, though often started, and beautifully amplified by the ancient Poets, (*b*) seems first to have been thought of *as the foundation of a System of Law*, by *Hobbs*, in his famous Book called

(*b*) Particularly Lucretius. Lib. 5.

6 WHAT THE LAW OF NATIONS IS.

the Leviathan, in which there is so much to admire, and so much to condemn.—It was adopted, and considerably enlarged by *Pufendorf*, and instantly approved of by writers without number. The result of their speculations is, that man in such a state, owing obedience to none, and having no positive Law to control him, trusts for the direction of his conduct to nature alone: The influence which she has over him, and the motives which, distinct from divine or human institutions, impel him to forbear from, or to perform any particular action, are called the *Laws of Nature*; (c) and whatever number of men there may be within the sphere of one another's intercourse, their conduct towards each other, (while thus independent of civil bonds,) proceeds solely under the government of these Laws.

(c) Enimvero utrobique intellegimus propositiones quædam immutabilis veritatis quæ actiones voluntarias circa bonorum electionem, malorumque fugam dirigunt, ac obligationem ad actus externos inducunt; etiam citra leges civiles, et seposita consideratione pactorum regimen constituentium.

Cumberland De leg. Nat. 6. 1.

When

When, however, civil Society came at last to be instituted, Men divided themselves into separate communities, and agreed to be governed by particular positive institutions, in which many of the rights conferred by mere nature were given up, for the better preservation of the rest: but the Communities in their relations with one another, having given up none of these rights, they still continue to be governed in all their public transactions, as the individuals that composed them originally were; and thus the *Communities* of the world *remain* in a state of Nature with respect to one another, and of course can follow no other Law but the Law of Nature. Hence, says Hobbs, the Law of Nature admits of two divisions; First, as it is applicable to Men as *Individuals*; Secondly, as it regards them as collected into Nations. The last is what is called the Law of Nations, which is thus nothing more than the Law of Nature. (*d*)

Such

(*d*) De Cive, Cap. 14. Sec. 4. "Rursus Lex naturalis
 "dividi potest in naturalem *hominum*, quæ sola obtinuit
 "dici Lex naturæ; et naturalem *Civitatum*, quæ dici
 "potest *lex gentium*, vulgo autem *Jus Gentium* appel-
 "latur, Præcepta utriusque eadem sunt," &c. &c.

8 WHAT THE LAW OF NATIONS IS.

Such is the train of reasoning adopted by those who contend that these two Laws are exactly the same with one another; and the favourers of this system are so numerous, and have existed in times so ancient, that it would seem almost presumptuous to have any doubt of its soundness. The opinions of the Authors of the *Digest* and the *Institutes*, are all founded upon it; and nothing is more common than to use the two Laws in senses nearly synonymous. (e)

“Law,” says Dr. *Taylor*, “must be either
“*natural* or *instituted*, viz. such as God pre-

So also *Burlemaqui* “Il faut donc dire que le Droit des
“Gens, proprement ainsi nommé et considéré comme une
“loi qui émane d’un Supérieur, n’est autre chose que le
“*droit naturel* lui même, non aux hommes, mais aux
“Peuples,” &c.

Principes du droit naturel, 2. 6. 5.

(e) Quod *naturalis Ratio* inter Omnes homines constituit, id apud omnes peræque custoditur, vocaturque *Jus Gentium*, quasi quo june omnes gentes utantur, Dig. 1. 2. 1.

Jure Naturali, quod appellatur *Jus Gentium*. J. 1. 2. 1.

Gaius also, De acquirendo rerum dominio, holds that we acquire Property in the Birds and Beasts which we take by the Law of Nations; observing that the *Jus Gentium*, cum ipso genere humano proditum est. Dig. 41. 1. 1.

“scribes

“ *scribes in the voice of Reason, or such as*
 “ *Man appoints by his Civil sanction : to which*
 “ must we refer the Law of Nations ? To
 “ the Law of Nature doubtless, of which it
 “ is a part : for if we consider its origin, it
 “ is the Law of Nature ; if the object or
 “ application of it, it is the Law of Nations.
 “ It is still the dictate of right Reason, ap-
 “ plied to the wants of Societies. So that
 “ what used to be called *Jus Naturæ*, be-
 “ comes *Jus Gentium*.” (f)

Specious, however, as this reasoning ap-
 pears, and sound as it may be allowed to be,
 as far as it goes ; it is probably not diffi-
 cult to demonstrate that something more is
 necessary than a simple view of the Law of
 Nature, before we consider ourselves obliged
 to yield obedience, as to a *Law*, to those
 customs which govern the intercourse of Na-
 tions.

Whoever casts his eye over the innumer-
 able forms and particularities, which the States
 of the World consider themselves bound to
 observe in certain situations ; the *changes* in

(f) Taylor's Civil Law, p. 128.

those forms ; the partial or the general observance of them ; and the varieties of conduct which evidently spring from *positive Agreement* ; can hardly be led to a firm belief that the Law of *Nature* alone, points them out for our regulation. The Law of Nature is considered besides, as *immutable* ; *imprescriptible* ; and existing through all time ; (g) (a point which we shall soon have occasion to consider more at large ;) but the difference between the Law of Nations *now*, from what it *has been*, must at once overthrow the position. For example ; it was part of the Law of Nations formerly, to admit of the reduction of Captives to Slavery ; and that upon the supposed right of putting them to death : Yet a Nation which in these times should venture upon such acts of barbarity, would not fail to draw down upon it, the execration, and possibly the perpetual war of its Neighbours. This conduct however is justified according to the *law of nature*, by all Jurisprudential Writers : To consider it therefore as a breach of the *law of nations* ; or to hold it out as matter of detestation, because

(g) Taylor's Civil Law, 129.

It is a breach of them ; can only be founded upon the supposition that the latter law is very different from the former. It has indeed been well said by *Puffendorf*, that the right to do any particular thing, imposes not upon us the necessity for doing it ; and hence it may be argued that this abstaining from the execution of prisoners in War, is still agreeable to the Law of Nature, though pushed to its extent, that law might permit us to do much more. But if we abstain from this *full* exercise of the right, and that, in consequence of the *law of nations*, which would be shamefully broken if we did not ; it shews that the two laws are essentially different ; and if the one may be said to be only *less* in extent than the other ; it is different, from the very circumstance of its being *less*. (*b*)

How

(*b*) Vide Bynkershoek. *Quest. Juris Pub.* “ Sed mores
“ Gentium qui olim fuerunt et nunc sunt, sollicitæ distin-
“ guendum est ; *Moribus censetur, precipua pars Juris*
“ *Gentium.*”

Hence the opinion of Grotius, reasoning on the Inviolability of Ambassadors. “ Bonum et æquum, id est
“ merum *Naturæ Jus* patitur poenas exigi, ubi reperitur
“ qui

12 WHAT THE LAW OF NATIONS IS.

How it came to be thus circumscribed; how the full force of the liberty enjoyed in a state of nature, came to be opposed by certain Institutions which are, or ought to be, invariably observed; are questions not so easily answered, except by acknowledging that Man has appointed this circumscription by his *Civil Sanction*; which Dr. Taylor, in the passage above cited, allows to be not *Natural* but *Instituted Law*.

In a State of Nature; that is, acting under the Law of Nature alone; if it be necessary to make war, war is made without any notice but the very act of hostility. Among Nations, (though doubts are entertained by many on the soundness of the point,) those who make war by sudden ravages, are considered as *Robbers*, and may be punished as such; and accordingly, from the oldest time, a solemn form which stamps a State with the terrible character of *Enemy*, has been deemed necessary before it can pro-

“qui deliquit; at *Jus Gentium* legatos, et qui his similes
“fide publica veniunt, excipit. Quare ut rei fiant Legati,
“contra *Jus est Gentium*, *Quo vetari multa solent, quæ*
“*Jus Naturæ permittit.*” De J. B. et. P. 2. 18. 4. 3.

ceed

ceed to acts of *legitimate* War. In a State of Nature, if once in consequence of just hostility, we are permitted to kill an Enemy ; it should seem that the manner of doing it, was indifferent ; under the Law of Nations however, nothing is more expressly forbidden than the use of *poisoned* arms. In a State of Nature, it would appear, that whoever assists my enemy, though only to a certain point ; by the very act of assistance, becomes my enemy also : and even under the law of nations in *other* times, such doctrine was held reasonable ; In the days of modern refinement however, it is not considered as a breach of those laws, nor a sufficient cause for War, to lend aid to one State against another, when bound to do so by *Treaty*. (i)

In reasoning upon many of these customs, it would possibly be a task not more unnecessary than vain, to endeavour to trace them up to the law of nature. In many points that law absolutely withholds its decision ; and leaves us often to chance, where precedent is wanting, to determine upon a rule

(i) See more upon this point, when we come to the Influence of Treaties on the Law of Nations.

14 WHAT THE LAW OF NATIONS IS.

by which millions perhaps are to be governed. For example ; on the discovery of uninhabited lands ; though the *law of nature* may prescribe some act of possession to those who wish to establish themselves there ; it cannot possibly determine what shall be the particular form to constitute a legal property, in the eyes of the rest of the world. That form, it is left absolutely to the *law of nations* to settle ; and it may be any trivial thing which chance, or accident, or caprice may point out. Not only this, but immense tracts of Land, which have never even been seen ; Seas and Rivers that have never been explored, are often claimed to the exclusion of others, merely on account of a partial discovery of them. Of the same nature with this, are a vast number of *Ceremonies*, and maxims, all of them forming part of the *Law of Nations* ; but wholly independent of the *Law of Nature* ; as, the particular forms of declaring War ; the distinguishing marks of Heralds, and Flags of Truce, in order to shew the pacific intentions of those who bear them ; the precedence of different nations according to the forms of their government, whether Imperial, Monarchical, or Republican ; the Ceremonies

nies of Courts ; the Credit attached to certain documents supposed to confer high privileges on those who are furnished with them ; (as the Credentials of Ambassadors ;) the great immunities of those Ministers, (not absolutely necessary for the success of their mission, but) agreed upon by different nations ; the proportion of *Salvage* allowed to a nation that recaptures the property of another, with whom there is no Treaty, from a common enemy ; all these, are surely the effect of *Convention* (*k*) of some sort or other ; and by no means pointed out by natural right. “ *Natural Law*,” says *Bynkershoek*, “ establishes neither distinction of persons, “ nor property, nor civil government ; it is “ the *Law of Nations* which has invented “ these distinctions, and renders all those who “ happen to be within the territory of a State, “ subject to the jurisdiction of that State.

(*k*) “ Cest le *consentement* de toutes les Nations de la “ Terre qui fait ce qu’on appelle le droit des Gens. Il “ tient le milieu entre le droit Naturel et le droit Civil ; “ et est d’autans plus considerable que le dernier, qu’il ne “ peut estre changé ni alteré, sinon du mesme *Consentement* “ unanime de tous les peuples.”

Wicquef. de l’Ambassadeur, l. 1. 27.

“ *Reason*

“*Reason and Custom* are the only Bases of
“the *Law of Nations*.” (1)

Of this opinion also, and in all its extent, seems to have been a writer of great perspicuity and comprehension of mind, though his writings are seldom explored. I mean Francisco SUAREZ, a famous Jesuit of Grenada, in the sixteenth century, and long time professor of divinity in the University of Conimbro.

I shall make no apology to the learned Reader for setting before him the following of his positions.

Natural law, differs from other laws in this ; that other laws, *constitute of themselves* the turpitude or honesty of the things they prohibit or inculcate ; while Natural law, always *pre-supposes* in the act or subject, the turpitude which it prohibits, and the honesty which it inculcates ; and therefore we usually say that a thing is forbidden by

(1) Bynk. de Foro Leg. Cap. 24.

this law, *because* it is bad, or commanded, *because* it is good. (m)

Now it is to be believed, that the Law of Nations does not command or prohibit things because they are *intrinsically* good, or *intrinsically bad*; for such things belong properly to *Natural* Law; and in this sense therefore the Law of Nations is not comprehended in *Natural* law. (n)

The Law of Nations differs in the first place, and that very particularly, from *natural*

(m) Vide Fr. Suarez. De Leg. ac Deo Legislat. L. 2. C. 7. S. 1. Imo in hoc differt lex naturalis ab aliis legibus, quod aliæ faciunt esse malum quod prohibent; et necessarium vel honestum quod præcipiunt; hæc vero *supponit* in *actu* seu *objectu*, honestatem quam præcipiat, vel turpitudinem quam prohibeat; et ideo dici solet per hanc legem prohiberi aliquid quia malum, vel præcipi quia bonum.

See also other opinions to this purpose. Puffend. Droit des Gent. L. 2. Ch. 3. S. 4.

(n) Concludendum igitur censeo, *Jus Gentium*, non præcipere aliquid tanquam ex se necessarium ad honestatem, nec prohibere aliquid quod per se et *intrinsece* malum est, vel absolute, vel tali supposito Statu et conditione rerum; sed hæc omnia pertinere ad *Jus Naturale*, ac Subinde in hoc sensu, *Jus Gentium*, non comprehendi Sub jure naturali. Id. 2. 17.

18 WHAT THE LAW OF NATIONS IS.

law ; in so far as it contains certain *positive* precepts, the necessity of which it does not infer *solely* from the *nature* of the thing inculcated, by an inference drawn from *natural* principles ; and as we have shewn that every thing that is thus inferred, must be attributed to *natural* law ; some other cause for this necessity must be sought for by the law of *Nations*.

It differs in the second place, because it cannot be so *immutable*, as the law of *Nature* ; for *Immutability* takes its origin from *Necessity*.

Hence lastly, it follows ; that even in the things in which the two laws appear to agree, they are not exactly, and every way similar. (o)

Such

(o) Differt autem primo ac præcipue *Jus Gentium* a *Jure Naturali* : Quia quatenus continet præcepta affirmativa, non infert *necessitatem* rei præceptæ, ex sola rei natura per evidentem illationem ex principiis naturalibus ; quia quicquid hujusmodi est, *naturale* est ut ostendimus : unde necesse est, ut aliunde oriatur talis necessitas, &c.

Secundo differant consequenter, quia *Jus Gentium*, non potest esse tam *immutabile* sicut *naturale*, quia *Immutabilitas* ex *necessitate* oritur.

Tertio

Such is the opinion of the Philosopher of Grenada, and he adds to it a slight enumeration of those points which form the subject of the law of nations, but on which nothing is decided by *natural* law. Most of them have been mentioned above, and among them he particularly takes notice of the privileges of Ambassadors (*p*), and the necessity under which the world is supposed to be by the law of *nations*, and not the law of *nature*, to cultivate commerce. (*q*)

Thus much then with respect to those who favor the supposition of *Hobbs* and *Puffendorf*, that Man rose suddenly from the Earth, or dropped from the clouds, with all his Faculties perfect, and beheld other beings around him, of the same species, and in the same situation.

Tertio hinc fit, ut etiam in his, in quibus hæc jura convenire videntur, non habeant omnimodæ similitudinem.—
Id. L. 2. C. 19. 3.

(*p*) Id. 2. 19. 6.

(*q*) Jus naturale *per se*, ad hoc (*Commercium*) non obligat; potuisset enim una Respub. per se vivere, et nolle *Commercium* cum alia, etiamsi non esset inimicitia.—
L. 2. 19. 7.

20 WHAT THE LAW OF NATIONS IS.

But to those who lend their belief to the tradition handed down to us by our Fathers, in the most complete as well as the most venerable monument of Antiquity extant in the world ; little reflection is wanting to shew, that reasonable doubts may be entertained, whether mankind ever existed in any state where certain customs were not known and complied with ; and if so, the law of *nations* must, even at all times, have been different from the mere law of *nature*.

The history and origin of Government and Civil Society, have been topics, so often handled, and the subjects of so much learned and ingenious discussion, that it would be little necessary to touch upon them here. But if we believe in the MOSAIC TRADITION, and give our assent to that wonderful force of corroborative circumstances which are supplied by the history and the face of the Earth ; we can hardly imagine the accounts of the State of *Nature* above mentioned, to be any thing more than the wild images of Poetry, or at best an invention for the more convenient deduction of certain reasonings on Law and Right.

Upon

Upon the supposition then that the world was peopled by a single pair, and of course that every man except the first, must have gradually advanced through a long and weak infancy, to the full use of his faculties in body and mind ; it is hardly possible not to believe, that Government and Society (of what sort is not here the enquiry) is as old as the world itself.—And however soon the emigration of children from their fathers, or of particular families from their community, may have taken place ; still, the existence of certain customs and ceremonies, and even of rules and laws, must be supposed coeval, or nearly coeval, with the existence of mankind.

This latter consideration, is what I do not recollect to have seen in any of those theories which make a difference between the laws of nations and of nature ; nor is it offered as conclusive argument, but merely as strong collateral evidence, the weight of which must in every man's mind depend upon the inclination of his opinion with respect to the manner in which the world was peopled.

So strong was the impression with GROTIUS, that the law of nations was the *custom* of nations, exclusive of the dictates of nature; that a writer of great weight (r) has imagined him to have pushed this theory too far, and to have rejected the interposition of natural law, more than was reasonable.—And indeed in the following sentiments, we may suppose him to mean that the States of the world form one great federal community, which has actually determined upon one common, definite Code of Laws for its government.

“As the laws of every State,” says he, “have a view to the particular interest of that State; So among the States of the world, or the greater number of them, certain laws may be agreed upon: (*ex consensu*) which have a view to the interest, not of single Communities, but of the great whole; and this is what is called the law of nations as often as we distinguish it from the law of nature.”

Again, “Whenever we observe a settled maxim put in practice by numbers at dif-

(r) Vattel in pref.

“ferent times and places, we must attribute
 “it to some universal cause; which in the
 “subject before us, can only be by making it
 “flow immediately from *natural* principles;
 “or the *common consent* of the world. The
 “one points out what is the law of nature;
 “the other what is the law of nations; for it
 “follows of course, that what is not deducible
 “at once by reason, from certain fixt prin-
 “ciples, and yet is universally observed; must
 “derive its force from *voluntary consent*. I
 “have therefore been careful,” continues he,
 “to distinguish the law of nations from the
 “law of nature, as well as from the civil
 “law.” (s)

In this opinion, the Philosopher of *Delft*,
 may be thought to have gone too far; since
 though there can be little doubt but that *Con-
 vention* enters into the composition of the law
 of nations; it can hardly be denied that there
 is much force in the opposite *Theory*; and
 though the transactions of nations are go-
 verned by custom in a vast variety of points;

(s) Prolegom. Sec. 17, 41, 42.

yet in the beginning, and even now, in affairs that are without precedent, above all, in points of general duty and conduct, they can have nothing to follow but such laws, as individuals not connected together in civil society are bound to observe. (t)

Steering therefore equally clear of the inaccuracy of the *Roman* Lawyers, and some modern authorities; and this opinion of *Grotius*, that the Law in question is *Instituted* Law, and that alone; we shall not perhaps err much in inclining for the present, to the more recent Sentiment, that although the Law of *Nations* is to look for its principles to the Law of *Nature*, and Sovereigns are to be governed in their general line of conduct, and in all particular cases that are new, by the same principles as would govern independent individuals; Yet, that many customs having been adopted, and many maxims agreed upon, we are to look to them, in those cases where they present themselves, for the interpretation of

(t) What that law is, we shall enquire more at large in a future chapter.

the principles. (u) I say, *inclining for the present*, because we mean hereafter to enter upon a full discussion of the Law of Nature, and to endeavour to settle more accurately than has hitherto been done, what we are to understand by it, and under what modifications, when we speak of it as the foundation of the Law of Nations.

Thus then the law of nations may be said to be constructed in the same manner with various parts of other laws, which are not written, but derive their force absolutely from Equity and Custom, (x) of which, a very great proportion of the law of this realm, (surely far different from the *mere* law of nature) is an illustrious example.

There are indeed cases perpetually happening, in which various modes of action present themselves, all equally recommended by Nature and Reason; and in which, it is not of

(u) In the same manner as (with us in England) it is an Act of Parliament which prescribes the general terms of a law, but it is the Courts of Justice which are charged with its interpretation; and the Act, and the interpretation (in the cases that have been actually decided) *taken together*, form the law.

(x) See Grot. de Jur. Bet. P. 1. 1. 14. 1.

so much consequence to determine upon any one of them from a thorough conviction of its superiority; as that something definite shall be determined upon. In these cases, it is evident that if nature and reason recommend them all; the selection can be only made by the sanction of *positive* law. The end is pointed out by the one; the means are adopted by the other; the principles are founded in *reason*; the application, is absolute *institution*; so that the whole together, form a composition of the laws of *nature*, and the laws of *man*. I have alledged," says *Bynkershoek*, (upon the Inviolability of Ambassadors) "whatever reason can adduce for or against the question; we must now see what is really to be determined; what *Custom* will have settled, will carry it without doubt; since it is on *Custom* that the law of nations is founded; (y) and indeed whatever may be the definition of this law, we must always return to this; that, that which reason dictates to the people of the world, and that which they *observe* in consequence of a comparison they make of the things which have happened, form the

(y) *Bynkersh. De For. Leg. C. 7.*

sole law for those who have no other to follow. If men only make use of their *reason*; reason will but *advise* certain things to be observed by them; which *being thus observed*, so as to become established *Customs*, people are under a reciprocal obligation to comply with them, without which we cannot imagine either War, or Peace, or Alliances, or Embassies, or Commerce.” (z)

Such is the language of one of the ablest writers on this part of law, who saw clearly how different the modifications of certain Customs must render the mere law of nature. The sentiments contained in the small Treatise which he gave to the world, were ably developed by WOLF, (a) and put into more polished form by VATTTEL; from whom if we differ at all, it will only be in endeavouring to give something more definite and binding even than this assemblage of the laws of *Nature* and the laws of Man, as the *real* foundation of the Law of Nations.

In this stage of the argument, it may not be improper to take a view of an objection,

(z) De For. Leg. C. 3. (a) Jus Gentium.

whose

28 WHAT THE LAW OF NATIONS IS.

whose force, if allowed, would overturn the whole of what has been said. It is to be found at large (though it was thought of long before by Suarez), (b) in Dr. *Taylor's* learned Treatise on the Civil Law, in which he has occasion to consider the questions before us. The following is the Sum of his reasoning.

The Law of Nature is divided into *Absolute* and *Hypothetical*. The one obliges *absolutely*, *all persons, at all times and in all places, for it is immutable*; the other only *conditionally*; that is, supposing such and such conditions to exist; which, if they do not exist, nothing is done. But if they are just and reasonable in their own nature when they do come to exist, the obligation to observe them operates as strongly, as the obligation of the Law of Nature did in its absolute force. (c) This reasoning is thus illustrated by Cases.

The Law of Nature recommends the advantages of Society. When therefore Society is formed, and not before, *all the means of*

(b) De Leg. ac Deo Leg. 2. 18.

(c) Taylor's Civ. Law. Quarto Edit. 129.

maintaining it, and all the consequences that flow from it, are as much the Law of Nature, that is, the Law of Nature Hypothetical, as the rules before it, were the rules of the Law of Nature absolute. (d) So also with *Contracts*; the observance of which is not in consequence of any *new* Law, but merely that an *eternal and necessary* Law, has now a Scene in which it may exert its operations. (e)

When writers then tell us of a *secondary* Law of Nations, which in many respects is totally different from the *primary one*; this is the true and natural observation upon that seeming disagreement. If I am directed to cultivate Society, I find there can be none without a separation of property; Property introduces disputes; disputes are the occasion of war; war brings on Captivity; that again Slavery; till we come by the benefit of manumission to the recovery of our *natural* Rights.

This scheme has led people to imagine that the *secondary law of nations* was a kind of con-

(d) Taylor's Civil Law. 129.

(e) Id. 130.

ventional, voluntary law, distinct from the law of nature. But though the natural equality of mankind, and the admission of Slavery ; the community of goods, and the introduction of property ; and many other customs compared with natural right, seem in opposition to one another ; yet, if the rights and duties of this *new scene*, are not *incongruous* with the law of nature ; what is called the *secondary law of nations* *has really no existence* ; nor can *that be said to be introduced by positive or arbitrary contracts, or by voluntary confederacies, which is fairly the prescription of right Reason.* (f) Hence, all the obligations which arise from what is called the *Jus Secundarium*, were virtually laid upon us before, but could never be known till something called them forth. Thus *theft* is contrary to the *law of nature*, though it could not be known till after the institution of *Property* ; for the doctrine of “ *Alterum ne lædas* ” loses no force ; So that when the *Civilians* say that *Theft* is base in its *Nature*, they mean that *it would be so*, after *Property* was once introduced. (g)

To

(f) Taylor's Civil Law. 130.

(g) Id. 131. See also Suarez de Leg. ac Deo Legislat. L. 2. C. 18. Nam multa sunt de jure naturali quæ non obligent,

To this reasoning little can be answered; since if taken in one light, it cannot apply to the question before us, and therefore requires no answer; if in another, it is every where contradicted by fact. If it means that men have really no view to rule and precedent in their conduct towards one another; it would be useless to endeavour to prove that they had, when rule and precedent every where present themselves to notice. But if it means merely to trace *all* Laws up to their source and reason, and to assert that they are *Laws of Nature*, because the nature of man makes him propose some advantage to himself in *all* his constitutions; there can then be no question between us. In that view of the subject, all the laws that ever existed, may be deemed laws of nature; and the laws of a particular State, a particular District, nay even of a particular *Society* or *Club* of men, may be said to be laws of nature, as well as the laws of nations: For they are all founded upon the natural inclination to uphold Society; they

obligent, nec locum habent, nisi aliqua suppositione facta. Ut præceptum non furandi, non habet locum, nisi facta divisione bonorum et dominiorum.

are the means of *maintaining it, and the consequences that flow from it*, which to use the language of the argument are the laws of nature.

To those however who do not regard the question in this extensive point of view, but merely enquire whether the particular form in which the principles of natural duty are applied, must not have the *civil sanction* of men to stamp it with the authority of *law*; this reasoning will appear, if not nugatory, at least gratis dictum. (*b*)

As therefore the principles of all civil and municipal laws, must be founded in natural reason, but derive the form and manner in which they are brought into use, from *positive institutions*; So also the law of nations must put in force the dictates of nature, in some *known mode* agreed upon by all who conform to them. The only difference is, that in the

(*b*) It was Gibbon's judgment of Dr. Taylor's work, that it was of amusing, though various reading; but could not be praised for philosophical precision.

Dec. and Fal. Ch. 44. Note. 132.

one case, it is individuals who are called upon to settle the mode; in the other, it is whole nations, acting through the organs of their governments; that in the one, almost every thing that can exercise the judgment of an individual in his various relations, is settled for him by written law, or by precedent; while among States, (from their comparatively little intercourse, and the want of a *common Sovereign*,) much is left without precedent, wavering, as accident, or whim, or the varying ideas of natural justice, may direct.

Upon the whole then, the account of the Law of Nations, is not greatly different from that of the *Municipal*, which by all writers is considered as *positive* law. For both the one and the other look for their principles to *Reason*; for their application, to regular *Institution*; and hence a writer of the last age has said, not improperly, that the Law of Nations holds the midway between civil law and the law of nature. (*i*) When however they come

(*i*) Wicquefort de l'Ambassad. 1. 1. 27. Suarez also calls it medium inter naturale jus, et humanum, et priori extremo vicinius. L. 2. 6. 17.

to be broken, the difference is far more serious. The breach of *municipal* law is attended only by the punishment of the offender ; (the law remaining still in force, strengthened perhaps by the very infraction :) the breach of the other, can only be remedied by the refusal of those who are injured to comply with it any longer, and the law itself is totally destroyed.

CHAP. II.

OF THE OBLIGATION OF NATURAL LAW.

BUT a very material question presents itself now for discussion, which must be satisfactorily disposed of before we can proceed farther. Although it may appear settled, that the Law of NATIONS consists of the Law of NATURE, modified by the express or the implied consent of Nations; still if it should happen that the *particular* sets of actions and offices which compose what is called the moral science, and which are expressly said to take their rise and obligation from the Law of Nature, should not always resemble one another: If different philosophers, proceeding as they think from this same Law, should be found to have very different ideas of duty; and nations in consequence have adopted in the same situations, very *different* modes of conduct: If this, I say, should happen, we must I think be driven to confess, that the *Law of Nature* itself, is a very imperfect foundation for any Law which is

supposed to be definite and certain; and which on account of that foundation, and that alone, it is affirmed, is to govern *all the States of the World*.

A very able writer upon the subject of Laws, conceives the Law of Nations to depend upon the principle, "*that different nations ought to do as much good to one another in peace, and as little harm as possible in War, without prejudicing their real Interests.*" (k)

As a great fundamental principle, or outline of the Law of Nations, I have no kind of doubt of the soundness of this proposition; but when we come to *a detailed scheme of duties*, it is obvious that much more is necessary to render it *definite*, since it is obvious that a question may be immediately started, namely, what is it that constitutes our *real Interest*, and *who is to judge*?

Now could the Natural Law point this out with certainty to every man's heart and comprehension, there would be little or no

(k) Montesq. De l'Esp. des Loix. l. 1. ch. 3.

difference of opinion concerning it ; for the Natural Law, as is properly and uniformly laid down, is *universal* and *immutable*. Yet we all know the immense diversity of sentiment concerning *real Interest* which there is, and must be, where there is no common *positive* Religion to decide upon it with authority ; and in speaking merely of a *natural* Law, all idea of such a religion must be left out of the question. (l)

Even with a positive Religion, much difference of opinion has arisen upon various points of the Law of *Nations*. For example ; one of the reasons which produced the *Treatise* of *Vattel*, was a revolting assertion of *Wolf* (whom he owns for his Master) that *the use of poisoned arms, was legitimate in war.* (m) Some of *Vattel's* own positions in other parts of his subject, seem to me, on his own principles, to be equally capable of contest. For example, he founds the *natural* obligation of Nations to cultivate commerce, solely upon its *utility* ? and though he owns

(l) See Note c. page 6.

(m) *Vattel* Dr. des Gens. Prelim. 13, 14.

that one nation may refuse to trade with the rest, yet if it do so without *good reason*, he affirms it will be guilty of a breach of duty. (*n*) —But if *utility* is the sole cause of this obligation, it must be obvious that its *universality* must entirely depend upon this, that *all* mankind consider commerce in the same light with *Vattel*, which is known not to be the case. (*o*)

Who then can decide with clearness upon the Law of Nature itself, when extended into all the minute ramifications of a particular System, upon which *all* mankind are by no means agreed?

A great and very old question therefore arises, concerning the OBLIGATION of NATURAL LAW *as far as it is supposed to tie us down to the observance of one, certain, and detailed scheme of duties, and no other*: In other words to the pursuit of what *particular* Nations call GOOD, or the rejection of what

(*n*) Vattel Dr. des Gens. Prelim. l. 1. ch. 8.

(*o*) Suarez, as quoted in the last Chapter, (Note q. p. 19.) asserts in positive terms, that there is no *obligation* to cultivate commerce at all.

they call EVIL. If this cannot be shewn, we have as yet obtained absolutely nothing, concerning ONE FIXED foundation, for a Law of Nations, binding, *ex vi terminorum*, upon all the Nations of the world ; and as most of those learned men who have acquired such deserved reputation for their researches upon the subject, have generally taken this part of it for granted, there may be yet something wanting to the perfection of the Science.

In the present Chapter therefore I shall endeavour to examine, the force of the OBLIGATION which many judicious and virtuous persons have asserted we are *all* of us under, to observe invariably *one, particular, and certain* set of Customs, from the commands of nature alone. And if it shall be found that this obligation is at best but a weak one ; or that upon the same principles which are supposed to recommend it, very *different* sets of Customs may be, and are pursued with equal zeal ; it is clear, I think, that with such a sort of *obligation*, we can arrive at nothing determinate with respect to the Law in question. Should this be the Case therefore, I shall afterwards endeavour to

40 OBLIGATION OF NATURAL LAW.

come at what is likely to be the truth ; and to point out whether what is commonly called the LAW of NATIONS, is binding upon *all* the World, or only upon particular *Sets* or *Classes* of Nations, as they fall into different divisions of it, observing different Religions and pursuing different systems of Morality.

Preparatory to so important an enquiry, and in order to clear the question in the outset from seeming objections, it will be necessary perhaps to state in form one or two *obvious* propositions ; nor shall I be at all afraid of the danger of repetition, provided at the expence of being prolix, I may be certain of being perspicuous ; since all who have attended to speculations of this sort, must have perceived how much difficulty has often been occasioned, by the writer's taking for granted that certain things are *already* understood, and that the exact question is *already* known by the reader.

That we may therefore the more easily understand the following considerations, it will perhaps be right to make a division of the Law of Nature, (which is a term of im-
menfurable

menfurable extent) in order to come at once to what is the exact point of our enquiry.

The Laws of Nature then, may be divided into those which concern *animate* and *inanimate* Being; the first of which only, is the subject of our speculation.

The laws which govern this again, may be divided into Instincts and Reason.

Instinct without reason, is the law for the Brute Creation.

Instinct and reason together, form the law for MANKIND.

Thus, Man has as it were two natures. One in common with Brutes; inasmuch as he obeys the laws of Instinct; another peculiarly his own, inasmuch as he consults the laws of reason.

Between these two, there is this characteristic difference; that instinct acts with irresistible power, while reason only directs or advises, and may be perpetually opposed.

Hence, under the one, we are a blind and passive ; under the other, we are a free agent ; and it is to those Cases alone which come under the direction of reason, (that is, to Cases which admit of free agency,) that our enquiries are directed.

Hence then upon the whole, the point before us, is to ascertain if possible, whether the duties and actions which we denominate *Moral*, (as that a man shall love his neighbour as himself,) can be said to be *obligatory*, from what is called the Natural Law alone, *considered as distinct from the positive institutions of man*, (in other words, from Expediency or Utility,) *or the REVEALED commands of the Deity*.

A vast body of authorities, venerable for their age, their learning, and their powers of argument, hold the affirmative of this Question. At their head, appear the whole band of STOICS, and the followers of SOCRATES and PLATO of ancient times ; and among the Moderns, the names of SUAREZ, PUFFENDORF, HOOKER, LOCKE, (*p*)

(*p*) On Government.

CUM-

CUMBERLAND, BURLEMAQUI, VATTEL
TAYLOR, and above all, the profound
BUTLER.

These again are opposed by another great body of authorities, which are no doubt well known to the reader ; and which, however they may differ from them in the main points of their philosophy, are not to be neglected totally, or without discrimination. The philosophers I mean, are the PYRRHONIANS, the EPICUREANS, and the SCEPTICS of antiquity ; the Disciples of HOBBS, SPINOSA, MONTAIGNE, DES CARTES of later days ; and several others who are remembered within our own age. We proceed to enquire into the difference between them.

The opinions of the first mentioned class of writers are founded upon the following argument.

Whatever is discovered to be the practice of the whole, or nearly the whole of mankind, and to proceed upon a certain known, general, and fixed principle, must be in consequence

44 OBLIGATION OF NATURAL LAW.

sequence of some law, which may fairly be called the law of man's nature. (*q*)

Now there is an *universal* principle of action in the hearts of all mankind, which is to seek happiness as *social* and *benevolent* beings.

This may be drawn from a review of the internal frame or constitution of man, which leads him, when unbiaſſed by his own particular interest, to wiſh the happiness of *all* his fellow-creatures ; to approve of virtuous actions wherever he obſerves them, and to deteſt their oppoſite vices. This approbation, and deteſtation, are impoſed upon him by a certain internal, great, and regulating principle, called CONSCIENCE or reflection ; which, though his paſſions may lead him often to rebel againſt its power, it is nevertheleſs impoſſible wholly to blind or to deſtroy.

This great principle, adjusting and correcting all inward movements, ought to pre-

(*q*) Grot. J. B. p. 1. 1. 12. Puffend. 1. 6. 10. & 5. 3. 10. Barbeyr. Pref. to Puffend. p. 14. Hooker Eccleſ. Pol. B. 1. Sec. 8. Vattel, 1. 27, 28.

side over and govern them ; It is the instrument by which man is to be shewn what his real nature leads him to ; and obligations to the practice of virtue deduced from this review of nature, “ *are to be considered as an*
 “ *appeal to each particular person’s heart, and*
 “ *natural conscience ; as the external senses are*
 “ *appealed to for the proof of things congrizable*
 “ *by them. And thus, allowing the inward*
 “ *feeling SHAME, a man can as little doubt*
 “ *whether it was given him to prevent his doing*
 “ *SHAMEFUL actions, as whether his eyes were*
 “ *given him to guide his steps.*” (r)

The truth of this opinion may also be drawn, from a comparifon of the nature of man as refpecting felf, and as refpecting fociety ; by which it will appear “ that there

(r) Butler’s Second Serm. on Hum. Nat. Serms, p. 26, 27, 28. Barbeyr. Pref. to Puffend. p. 4. Il ne faut prefque pas fortir de foi meme, ni confulter d’autre maitre, que fon propre Cœur. Burlemaqui goes fo far as to deduce Virtue and Juftice from mere Sentiment and Taft, which, fays he, foreftal reafon. Dieu a donc jugé apropos d’employer auffi cette voye à légard de la conduite morale de l’homme ; et cela en imprimant en nous, un *sentiment*, un *gout* de Vertu & de Juftice, qui previent en quelque forte le raifonnement.—Du Droit Nat 2, 3, 5.

“ are

“ are as real and the same kind of indications
 “ in human nature, that we are made for
 “ society and to do good to our fellow-crea-
 “ tures ; as that we are intended to take care
 “ of our own life and health and private good ;
 “ and that the same objections lie against the
 “ one, as against the other.” (s) For though
 crimes are often committed against society ; so
 are they often committed against ourselves,
 by intemperance and other excesses ; and as
 there is really no such thing as absolute self
 hatred ; so there never was an instance of
 ill will, *for its own sake*, against mankind.
 Moreover, our passions and affections, con-
 sidered merely as *private* by ourselves ; are
 in fact, *public* passions and affections also.
 Thus, the desire of esteem from others ; the
 love of society ; (*considered as distinct from
 the good of it ;*) and indignation against suc-
 cessful Vice ; these are *public* passions ; relate
 to others ; and lead us to regulate our beha-
 viour so as to be of service to our kind. And
 thus the general disposition of our inward
 frame, is calculated to do good to our fel-
 lows, as well as to ourselves ; and any thing

(s) Butler's First Sermon, on Human Nature, p. 5, 6.

contrary to this in either case, is not to be considered as *legitimate*, but as the effect of mere ungoverned passion. (t)

That this sort of ungoverned passion, (though apparently natural,) is in reality contrary to nature, is discoverable first, from an attention to the various meanings of the word Nature; and afterwards by fixing the true one, which forms the subject of the speculation. For it does not mean merely, *any* principle in man, without regard either to the kind or degree of it; (such as the passion of anger or the affection of a Father for his children, which may both be called *natural*;) neither does it mean *merely* those passions which are *strongest* in a man, (in other words his ruling passion,) which is often and justly enough put for the *nature* of some *particular* man; in which light nature may be vitious, as well as virtuous. (u) But it means, that *reasonable, reflecting*, nature, which teaches men to do that which SELF demands of them, *after a view of all its consequences*; by which it will never suffer them to prefer a mere

(t) Grot. D. J. B. P. Prolegom. 6, 7, 8, 9.

(u) Butler's Serm. p. 33, 34.

momentary gratification, at the expence of future destruction ; but something that shall be gratification on the long run, all general consequences considered as much as they can be, which therefore ought to embrace the interests and the rights of others.

This is the nature which is meant by the speculation ; and in this point of view, what in common speech may be allowed (though inaccurately) to be natural ; may in the end turn out to be quite the reverse. Thus, though a brute rushing into a snare for the sake of a bait, may be said fairly enough to pursue his nature ; since it was natural for him to wish for the bait, and it was not in his nature to foresee the consequences ;—Yet it is not so with man ; who being endowed with reason, and governed magisterially by the principle of reflection or CONSCIENCE, *which without being consulted, approves or disapproves of a thing, and renders man a law unto himself*, (x) is bound to give up present gratification in order to avoid certain ruin ; and should he chance not to do this, such an

(x) Butler. Serm. p. 36, 37.

action is nevertheless evidently *disproportionate* to such a reasonable nature, and therefore in the strictest sense, is *unnatural*.

But as the natural passion to gratify self-love upon the long run ; (that is, the duty to avoid present pleasure, for future preservation,) would incline a man to do this, however strong his natural passion for pleasure might be on the other side, and even although it absorbed all others ; it is evident that there is a difference between a *real* and *reasonable* self-love, and that which is only deceitful ; that is, *mere passion* which looks not to consequences. This difference, not depending upon strength, or degree, must be a difference in *kind* ; and as, if such passion as has been described, prevail over self-love, it is *unnatural* ; (*disproportionate*,) while if real self-love prevail over passion, it is natural ; it is manifest that the *true* and *reasonable* self-love, is a *superiour* principle in nature to mere blind passion. Hence therefore, though it may be borne down by it, it is not the less superiour in its *nature* on that account ; and the power of passion must be considered as *usurpation* only, in the same manner as in

civil society it sometimes happens, that a rebel who is more powerful, usurps the Government of a lawful Sovereign ; who however is not the less a lawful Sovereign on that account ; neither is *power* considered as *authority*. (*y*)

As therefore the idea of a civil constitution implies united strength, and various subordination, under one head ; namely, that of the Sovereign ; and if you leave out the subordination, though all the members remain, yet the idea of civil government is destroyed ; so reason, appetite, and passion, considered without connection or arrangement, do *not* give the idea of human nature ; but that nature consists in a certain *arrangement*, or *relation* which all these parts bear to one another ; under which the passions or appetites, are to be considered as *subordinate* to reason and conscience. And as a civil government may be destroyed by a rebellion, the success of which does not render it legal ; so also may the constitution of nature ; in both cases, the nature of what

(*y*) Butler. Serm. p. 39, 40, 41.

ought to be, remaining the same, notwithstanding what is.

Hence, *exclusive of revelation*, Man is not a Creature left by his maker to act at random, and live at large up to the extent of his natural power, as passion, or humour shall direct; but from his make, constitution, or nature, he is in the strictest, and most proper sense, a law unto himself: he has the rule of right within, all that is wanting is, that he honestly attend to it. (z) And therefore enquiries after any *general* rule by which our actions may be denominated good or evil, though in many respects they may be of service, are of little with respect to this; since any plain honest man before he engages in any course of action; if he only ask himself whether what he is about to do is right or wrong, good or evil, *will be able to answer the question agreeably to virtue and truth, in almost any circumstance.* (a)

(z) Butler's Serm. 45, 46. et infr.

(a) Butler's Serm. 49. Barbeyr. Pref. to Puffend. 2. The last contents himself with saying, that the science of morals may be acquired *jusqu'à un certain degré*; though he adds *par tous ceux qui veulent faire usage de leur Raison, dans quelque état qu'ils se trouvent.*

Thus it is that the law of nature resolves itself at last into the law of reason ; and hence it is called “ the dictate of right reason, pointing out that a thing is morally right, or morally wrong, according as it agrees or disagrees with a *reasonable social nature*.” (b) Hence also, (if we must have a rule) there is a certain order, or fitness of things, to the support of which all actions, to be right, must ultimately tend, (c) which is called the System of the law of nature ; and which like all other Systems, is a whole, made up of component parts, the several relations of which to one another, produce the idea of what the system itself is. In man this whole, or System, has for its parts, the appetites, passions, and affections, and the principle of reflection or CONSCIENCE, which compose his inward frame ; the relations of which to one another considered, produce the idea of what his inward frame or consti-

(b) Jus naturale est dictatum rectæ rationis, indicans actui alicui, ex ejus convenientia, aut disconvenientia, cum ipsa natura rationali ac sociali, inesse moralem turpitudinem, aut necessitatem moralem, &c. GROTIUS. D. J. B. P. I. I. 10. I.

(c) See the Relig. of Nat. delineat. p. 128. 6th Edit.

tution

tution is, from which it appears plainly, that it is adapted to VIRTUE. (*d*)

Lastly, as this must be an *universal* and *immutable* law, or cease, from the terms, to be the law of nature; every man whoever lived, *whatever may be his ideas concerning the formation of things: even should he have the misfortune to be an Atheist, is bound to obey it.* (*e*)

Such is the argument of a great and respectable body of writers, who would prove *a priori*, from *their* ideas of the reasonable social nature of man, that the law of that na-

(*d*) Butler's Pref. to Serm. p. 10, 11.

(*e*) Elles (les loix naturelles) sont *certaines, obligatoires*, et sacrées pour *tout* homme raisonnable; *abstraction faite de toute autre considération que celle de sa nature; et quand meme on le supposeroit dans l'ignorance totale d'un Dieu.*— Il n'est donc point d'homme, qu'elles que soient ses idées, sur l'origine des choses, *eut il même le malheur d'être ATHEE*, qui ne doivent se soumettre aux loix de la nature, &c.—(Vattel Prælim. S. 7. in the notes).

This is in the same spirit with GROTIUS (Prolegom. 11)
 “ Et hæc quidem quæ jam diximus, locum aliquem ha-
 “ berent, etiamsi daremus, quod sine summo scelere dari
 “ nequit, *Nullum esse Deum*, aut non curari ab eo negotia
 “ humana,” &c.

ture obliges him to the practice of virtue and morality, *according to the ideas which are commonly entertained of them*; since in order that there may be no mistake as to the *particular* duties which they enjoin under those general terms, they go on to lay before us, the whole scheme of offices which men who have been in the habit of cultivating their reason to the utmost pitch of refinement, who have had all the advantages of civilization, and even of revelation, have agreed, after long and laborious research, to call moral.

Thus, we are not only obliged in general terms, by the natural law, to do good, and avoid evil; to do as we would be done by; to cultivate justice, and to worship the Deity; but, coming to particulars, we are to consider as crimes against nature, Adultery, Theft, Fornication, Usury, Falsehood, and every thing that is forbidden by the Decalogue: (f) We are

(f) Vide SUAREZ De leg. ac deo Legislat. L. 2. C. 7. 5.

Nam ea quæ naturali ratione cognoscuntur, in triplici genere distingui possunt.—Quædam sunt prima principia generalia morum, ut sunt illa, Honestum est faciendum, prævum

are bound to avoid intemperance ; to repair any mischief we may have caused to others ; to be always ready to render any innocent service that another may stand in need of ; to keep our words inviolably ; to avoid treachery ; to honour our Parents ; and obey our Sovereign, *so long as he does nothing contrary to the invariable maxims of natural right, or to the divine law as revealed to men.* (g) All this, and much more, though they involve a number of

pravum vitandum : Quod tibi fieri non vis, alteri ne feceris ; de his nullum est dubium, pertinere ad legem naturalem.—

Alia sunt principia, magis determinata et particularia: tamen etiam per se nota ex terminis, ut *Justitia est servanda ; Deus est colendus ; temperate vivendum est : et similia, de quibus etiam nulla est dubitatio, et a fortiori patebit ex dicendis. In tertio ordine ponimus conclusiones quæ per evidentem illationem ex principiis naturalibus inferuntur, et non nisi per discursum cognosci possunt, inter quas, quædam facilius et a pluribus cognoscuntur, ut Adulterium, Furtum, et similia, prava esse. Alia majori indigent discursu, et non facile omnibus notæ, ut fornicationem esse *intrinsece* malam ; Usuram esse injustam ; Mendacium nunquam posse honestari, et similia.*

Again. Nam præcepta Decalogi sunt *de jure Naturæ*, ut est indubitatum apud omnes, et tamen non omnia continent principia per se nota, sed ubique indigent discursu, ut etiam est clarum. Id. Sec. 6.

(g) Barbeyr. Pref. to Puffend. P. 13.

points, many of which, as we shall presently shew, are neglected by some Nations upon principle; and others depend on things, which are absolutely *positive*; all this, it is contended, is enjoined by nature, with the force of law, *because it is written on the heart of man.*

On the other side of the question, there have been many theories put forth, some of them eccentric to a degree of absurdity, others approaching nearer to a reasonable shape, but all of them adverse to this idea of moral obligation, confined to one particular system, *drawn from the mere nature of things.*

Without going into the detail of these systems, and premising in the strongest terms our just horror, at those of them which say, that there is no obligation at all; or that it is the nature of man to be *vitious*; or that at least he has no law to follow but his own appetite; premising this, I say, I shall endeavour to examine the force of the foregoing argument, as far as it has been supposed to be conclusive as to the point of our discussion; which, it must be remembered, is simply whether, *without the aid of a visible divine interposition,*

terposition, mere nature alone, can point out the obligation upon *all* the world, *invariably* to observe the *same* moral duties.

Now it appears to me that the whole of the argument on which the affirmative of this opinion is founded, is liable to one great and invincible objection; namely, that it does not *sufficiently* establish the point, that the *mere social* nature of man carries along with it uniformly, universally, and of necessity, all that train of *social* duties, pursued through all their ramifications, which compose the moral system of particular classes of nations, and which have been attributed to *all* the world, with what justice, ought to have been more fully made out by facts.

That man is a social or gregarious animal, no one will deny. That he cannot be this, and at the same time seek *as the end of his being*, the destruction of those with whom he associates, is equally clear. But it does not follow, (at least not without some farther enquiry,) that because he is *social*, he is bound to pursue *one, definite, and certain set of* actions, as the

the systems of natural morality would always have us suppose.

It is of extreme consequence to settle this in the beginning, because the whole will depend upon it. If he really is thus bound; that is, if *all* mankind have always thought it writ down in their duty, to pursue the common GOOD in *one, particular manner*; then, every thing that has been said concerning the necessity of supporting the order and fitness of things to produce a *general* Social happiness, will hold good.

But if he is *not* thus bound; if it should appear from FACT that the opinions of men concerning the manner of arriving at Good, are so various, that although we may say which is the right one for ourselves, we cannot determine for others; then, what has been said concerning the dictate of right reason, pointing out that a thing is morally right or morally wrong, from its agreement or disagreement with a reasonable Social Nature, can be applied only to those who concur in their sentiments concerning Good, and cannot be made binding *a priori*, upon those who
have

have sentiments of an opposite nature. We wish it, however, to be understood that in reasoning concerning moral agents, we do not mean to take into the account, any of those who *confessedly* give loose to their passions at the expence of reason; but only those who pursue the course of life, and the habits and maxims prescribed to them by their education, and their laws; of course, as far *as we are able to collect it*, who pursue their reason and judgment.

Now, if it should turn out that *all* such as these, do *not* uniformly and invariably act according to the same codes of duty; if many of them, (finding themselves independent of all *external* motives of religion, or positive conventions, and able, from mere strength, to shift for themselves,) appear to be indifferent about the fitness of things in the *sense which is put upon it*; or what is of still more consequence, appear to have a fitness of things, as it were, peculiar to themselves, in some cases perhaps, the very *opposite* of the other; if this should be the case, I do not see how it can be said that the *nature* of man obliges the whole

whole world to act uniformly and immutably in one, particular and definite manner.

This enquiry into facts; in other words into the history of Man, in order to come at his nature in these points, may appear unnecessary to those who take their ideas of universal morality, solely from their own. And indeed I have sometimes heard it asserted, that as the laws by which reason works are *immutably* the same; whatever is made out by reason to be the law of nature, must be so *to every one*, without any enquiry at all.

If we take the matter up a little higher, we shall however find that this is erroneous—For although when our nature is once ascertained, reason may decide whether particular actions are enjoined by the law of nature or not; yet it is not reason alone, but Reason and Fact together, which must determine what our nature is, or what it is not.

Of reason I have no other idea, than that it is the faculty of the mind which teaches us to draw conclusions from certain premises. What
the

the premises are themselves, unless they again are to be deduced by reason from others, it never will teach.

Thus, although the heart and the feelings once thoroughly known, reason may point out the folly, or, in the language of the argument, the *disproportion* to nature, which is discoverable in the indulgence of blind passion at the expence of ultimate preservation; and may that way, as has been very ably shewn, decide upon what is nature and what is usurpation: Although it may point out the *utility* of gratitude, affection, and general benevolence; yet it cannot plant those feelings in our bosoms. A man cannot force himself by reason, to be grateful, affectionate, or benevolent, if he happens to have the misfortune to be born without those feelings. Reason at least is so far from implanting them, that the STOICS, who place all happiness in wisdom, which is the perfection of reason, seemed to have for their object the absolute eradication of passion and affection.

Reason, therefore, as was observed, although it will point out to us what ought to be our conduct,

conduct, (*our nature being fairly understood,*) will not *of itself* tell us what that nature is ; and our knowledge in this respect must be derived solely from the senses, from observation, experience, and matter of fact.

When these have been consulted, we come at what we must always possess ourselves of, before reason can begin to work ; namely, the PREMISES, the combination of which produces the conclusions drawn by reason ; and if there should happen to be a difference about these *premises*, the conclusions, even of reason, cannot be immutably the same. When however, they have been ascertained ; then, and not till then, may reason step in and pronounce upon the conformity of any action to a general rule thus obtained. And this is the sole meaning of our adding the epithet *reasonable* to nature ; and of our coupling, as we constantly do, the terms *laws of reason*, and *laws of nature*, in the same phrase.

This then being settled, we are sent to the History of the Actions of Man, to enquire what his nature is ; and if we should discover that the tendency to pursue, *one, definite set of*
actions

actions, is not universal ; or that the ideas of GOOD are not uniform ; that is, if there should be strong, marked, and ample exceptions to these points ; the argument concerning a particular System of Morality for *all* mankind, enjoined by the Law of Nature, as far as it is drawn from the *Universality* of its reception, must be given up.

That a law of *nature*, to be binding, must be shewn by the fact to be received by *all* mankind, may I think be made out, (should any doubt be entertained upon it) from the following considerations.

Whoever has observed the various senses in which the word Nature is used ; whether applied to the *whole* universe, or only to the world called Earth ; to the properties of *all* created substance, or only to particular distinct species of it, as living or inanimate, being ; or subdivided again into particular parts of these, as vegetables, or stones ; brutish animals, or reasonable animals ; will nevertheless discover that it constantly means a WHOLE, either absolutely, or relatively ; that is, if a *Genus*, the *whole* of that *Genus* ; if only a *Species*, the *whole* of that *Species*.

given a very erroneous account of their *nature*.

NATURE therefore, in this acceptation of it, is what the Logicians call the ESSENCE of a thing; it is that, without which the thing described, would not be *what* it is described; of course, it must comprehend, and spread itself through *every* part of the thing. Thus, (to pursue our illustrations) if an Indian who had never been out of the torrid Zone, (and who therefore believed, that it was a law of nature for rivers to be perpetually in a fluid state;) were to visit a higher latitude, and to see the rivers gradually congealing by frost; he would be obliged on his return home to tell his Brother Indians, that they had been wrong in their ideas concerning the law of *nature* with respect to rivers.

Now to apply this (if the reader has not done it already) to the laws of nature as they concern human kind; it will follow, that if these *particular* moral duties, such as they have been detailed above, are not received as moral duties, *all* over, or nearly *all* over the world; no obligation can be made out from

the heart, or the impulses of the *nature* of man, by which, independent of external motives, (*i*) we are *all* of us *bound* to observe them ; and as the Indian traveller was forced in visiting higher latitudes, to give up the idea of the Law of Nature concerning the *invariability* of the state of rivers ; so must a moral philosopher who argues for the obligation imposed by his system, from the *universality* of the feelings and dispositions on which the duties he enjoins are founded ; be forced to give up this *obligation*, should the fact of the *universality*, be fairly shaken.

In this respect therefore the rules of philosophising with regard to *morals*, may be compared to the rules of philosophising in *physics* ; by which it is laid down, that “ the way of ANALYSIS, ought ever to precede the method of COMPOSITION ; which analysis, consists in making experiments and observations, and in drawing general conclusions from them by *induction* ; and although the arguing from experiments and observations by induction, be no demonstration of general conclusions ; yet

(*i*) Namely, of Religion, or the Civil Power.

it is the best way of arguing, *which the nature of things admits of*; and may be looked upon as so much the stronger, by how much the induction is more general. And if no exception occur from phenomenon, the conclusion may be pronounced generally. *But if at any time afterwards, any exceptions shall occur from experiments*; it may then be pronounced with such exceptions." (k)

Now I own, I do not see why this reasoning of the greatest of all experimental Philosophers, should not hold good with respect to morals. And should it do so, it will follow, that if upon an analysis of their modes of thinking, to be found in the history of mankind, there are any particular sets of actions which obtain *universally*, and *uniformly* amongst them as duties; those duties may be fairly said to proceed from the NATURAL LAW. But if those sets of actions are found to be rejected by vast numbers of men; and not only this, but that their opposites are substituted to hold their places equally as duties; why then, the conclusion is to be pronounced not *generally*, but with such *exceptions*.

(k) Vide Sir Isaac Newton's Method of Philosophising. Optics, P. 180.

We might not hesitate even to affirm, that as what have been sometimes supposed to be the laws of nature as relative to physics, have been absolutely overturned by a long, uniform, and adverse set of experiments; So, were the fact to happen that men were found universally to pursue a conduct the very opposite to that which in *general* they think themselves obliged to adopt, the supposed natural law of mankind might also be said to be overturned; so much does the discovery of what this natural law is, depend upon experiment, that is upon what actually is the *general* conduct of men. Always however provided, that such an opposite conduct is adopted in compliance with the *deliberate judgement* of those who pursue it, and is not a mere *violation* in practice, of what is received and settled in theory.

As therefore before the introduction of experimental Philosophy, abundance of Hypotheses were often starting forth, which, whatever ingenuity they might evince before the facts were enquired into, were instantly put down and confuted by adverse experiments; so it is very possible in morals, when men argue *a priori*, and assume things as fact,
 2 which

which may not be so, or not so in sufficient universality, for the whole fabric which they build, whatever may be its beauty or magnificence, to fall with its foundation.

Hence then it is we imagine, that the whole of this interesting subject resolves itself at last into the HISTORY OF MAN; To that, and that only, can we refer; it is the sole point to which the forces of the two contending opinions can be satisfactorily directed; it is the only issue, that can be fairly joined, so as to produce a lasting conclusion. For in vain do we pursue the matter through all the subtleties of intellect; in vain are the profoundest metaphysics made use of to prove any one thing concerning the nature of man, *a priori*. Of that nature I can obtain no knowledge, except through the same channels by which I become acquainted with the nature of any other animal; nor can I tell what is that nature demands of man to do, except by enquiring what he has actually done.

Now, if in making this enquiry, we were to find, that mankind were like a multitude that set forth to attain the summit of a difficult mountain; and many paths presenting themselves, that they all of them, or nearly

all, took the same path ; we might then with tolerable justness be led to believe, that they were *impelled* to it by some destiny, or law. But if, on the contrary, no external influence arising to deter them from all but one, the fact actually proved to be that they often fell into different tracts ; we should have no inducement to believe that only one of the various paths was the right one. And no advice being given, no reward held out, no punishment threatened ; in short being under no influence, other than the appearance which the paths might wear to bias their judgments ; we could not reasonably imagine that it was a crime to enter into any one of them, more than another.

When however a track was once chosen, and that *upon a deliberate and firm belief that it was the right one*, even though in the end it should lead into mere labyrinths and quagmires, the set of travellers that pursued it would be bound to do so until they discovered their error ; and thus, though there were as many different sets of travellers as there were paths, each set would be under equal obligation, *in their own minds*, to continue their course.

The

The history of the mind of man will probably upon examination appear to conform to this allegorical account of it. Some great principles may no doubt be found in such universal stability, that they may very fairly be said to form the Law of Man's Nature; as the desire of Happiness; the pursuit of Good; and the rejection of Evil; and subordinate to these, the wish to support the interests of our country or families; for without these, the nature of things in these points, would indeed be destroyed. But when we come to the particular detail of the manner in which we can best arrive at these great objects, we must give up the expectation and even the hope of universality; for whether we take savage or civilized life, it will be found that the Science of Morals, which every one would have to be so certain, has been, *when divested of the visible and protecting hand of the Almighty*, capable of almost as much diversity of opinion, as there has been diversity of feeling and sentiment in different classes of men.

I mean not (as was before observed) to draw any conclusions from the example of those men who confess an indulgence of passion at the expence of reason; but of those

only who think they are acting rightly ; of those even who have been remarkable for the subtlety of their understanding ; many of them eminent for gravity, and some of them for superior virtue,

Thus CARNEADES, reasoning upon the obligations of morality, asserted that there was really no such thing as a law of nature ; no such thing as JUSTICE ; but that every thing that appeared useful, was thereby rendered lawful. GROTIUS could only ground the confutation of this, upon the disposition of man towards such a state of society as is supposed by the argument we are canvassing ; *not*, says he, *qualiscunque, sed tranquillæ* ; (1) which tranquil state, whether it is *universally* pitched upon to be the happy one, it is obvious can only be determined by an enquiry into the fact.

The celebrated HOBBS again, as is well known, questions this last opinion in the most direct manner, when he says the very nature of man leads him to war with his fellows. EPICURUS made all happiness to consist in pleasure, either mental or corporeal ; without any great security for the rights of others

(1) D. J. B. P. Prolegom. 6.

which

which might stand in the way of it. ARISTIPPUS confined it to *sensual* pleasure; and the STOICS banished all pleasure whatsoever, by endeavouring to render the mind, what it certainly is not, an absolute blank with respect to the affections; and if pain could not be submitted to, their only resource was in self-murder. (m) The CYNICS, from principle, threw off all appearance of decency, and performed the most immodest and disgusting offices of nature in public, upon the sole idea that it was nature that had enjoined them. The SCEPTICS and followers of ARCESILAUS doubted of every thing; refusing to decide that any one thing was strictly virtuous or vicious; doing away by such tenets, the whole advantage of Moral Philosophy. (n) PLATO, indeed contended for the dignity of human kind, and a refinement of friendship approaching to chimerical; but ARISTOTLE at least confined it to the handful of men called Greeks; when he laid it down that strangers were meant by nature to be their Slaves, and

(m) ZENO supported his own precepts upon this point in a manner somewhat extraordinary, when he hanged himself merely because he broke his finger.

Stanley's Lives, &c. 297.

(n) See Stanley's Hist. of Philosoph. tit. Diog. & Arces.

accord-

accordingly, that it was allowable to make them so wherever they could find them. The ROMANS, all wise as they were in the natural law, seemed to have had this Dogma in view, in allowing by their Digest, the reduction to captivity of all those between whom and themselves there was no treaty. (o)

They were equally faulty in maxims that regarded their private lives; of which their filthy and depraving custom of lending their wives to one another, a habit which it should seem is as revolting to nature as any, and expressly forbidden by the writers on natural law,) is a sufficient proof. Nor did this exist when Rome was the receptacle of savage banditti; but when she was the abode of the Arts, of Statesmen, and of Orators. (p) A neighbouring nation who boast themselves still more wise than the Romans, seemed to go as far as they did in this point, when they passed the licentious law by which married persons might be divorced, without assigning

(o) Vide infr. Chap. VI.

(p) *Cato* lent his wife to *Hortensius* (she being then big with child) but a few years before the Augustan Age. The latter, as is well known, was an orator of the first rank, and a very accomplished man.

any reason, but the mere persevering determination of either of the parties ; a kind of marriage which, I confess, I cannot distinguish from that of a Lion and Lioness in the woods, who copulate together and depart as they please.

The ÆGYPTIAN laws gave a sanction to Incest. By the ATHENIAN, a man might marry his Sister by the Father's side ; and if a woman was an heiress, she was bound to marry her next of kin—If also her husband was old and impotent, she was permitted to cohabit with his nearest relation ; and this was a law of the far famed SOLON. (*q*) In the same spirit with this, the Incas of *Peru* could only marry their sisters, if they had any ; if not, their nearest relation. (*r*) A Tartar, upon the death of his father, married all his Wives, except his Mother ; (*s*) and marriages with Sisters were permitted among them, and was sometimes even a duty, although fornication was punished with death. (*t*)

If this kind of incestuous marriage how-

(*q*) Potter's Antiq. i. 170.

(*r*) Picart. Cerem. Relig. 3. 204.

(*s*) Rubruquis Voy. ap. Hackluyt. i. 99.

(*t*) Carpinis Trav. ap Hackluyt. i. 55.

ever is not unnatural, (which has been held by some;) (*u*) others, which have been expressly condemned as such, (*w*) have also met the sanction of very extensive and even wise nations. ATTILA married his Daughter, in mere compliance with the SCYTHIAN customs; and the MAGI of the Persians, following the laws of ZOROASTER, not only allowed the marriages of Parents and Children, but enjoined that the members of their own body could only be taken from the offspring of such a commerce,

And how is it that Men have been known to treat their Children; not in a burst of passion, *disproportionate* to a reasonable cool self love, but upon a *deliberate* principle of doing what they thought was good. The LACEDEMONIANS, in order to ensure a hardy race of men, destroyed all their infants that appeared infirm; nor were parents allowed to rear them, even if inclined to do it. The new born children were carried before certain Judges called Triers, who if they appeared likely to thrive, gave orders for their preservation; if not, they were thrown into a deep

(*u*) Grot. D. J. B. P. 2. 5. 12. 1.

(*w*) Id. 2. 5. 12. 2.

Cave of Mount Taygetus. (x) The same practice of exposing children was nearly universal over Greece, the Thebans being praised by Ælian for being the only people in the country, by whom the custom was prohibited. (y) By the Laws also of the Twelve Tables, the Romans were even commanded to destroy those of their offspring who were eminently deformed. “Pater, insignem ad deformitatem, puerum cito necato.” (z)

Nearer to our own times is the still existing custom of the CHINESE; nor is it an excuse, but rather an aggravation to say, that *necessity* legitimates the practice; since the riches and the wisdom of CHINA are the boast of the world, and the necessity complained of must be owing, not to the *want* of food, but the improper distribution of it.

In the thirteenth century, BARTOLUS, the most famous Civilian of his time, and therefore the most likely to understand the law of nature, contended gravely that the Emperor of GERMANY was the Emperor of the World;

(x) Potter Antiq. 2. 333.

(y) Ælian. 2. 7.

(z) Mem. des Inscriptions. 12. 78.

and DANTE, another Civilian, assigned a reason for it, founded no doubt on the natural law, since he supposed it to be so, because it was for their good. Both antient and modern nations, and the wisest men amongst them, have concurred in justifying the Slavery, not merely of persons who may be supposed to have *forfeited* their liberty; but of those who have not even seen the light: For this they do when they assert, that as children must follow the lot of their mothers, the children of female *Slaves* must be *Slaves* also.

Lastly, the Legislators of twenty-five millions of men in FRANCE, affirmed, that it was *Nature* that had pointed out the true bounds of their Empire to be the SEA and the RHINE; and accordingly twenty-five millions of men wage bloody war, in part, to support this most natural proposition. All these absurdities, these horrors, and this injustice, are quoted, not as the *temporary* and avowed *rebellion* of the passions against reason; but as the dictates, to those who held them, of reason herself. Nor were they the maxims, or rule of conduct of *insane*, or *wicked individuals*; but most of them, as we see, are drawn from
immense

immense and important Empires ; from the Schools of Sages, and the lives of Heroes. (a)

Thus much for the idea of *civilized* men and nations upon this subject. Were we now to go into the detail of the practices of others, who have never been in the habit of cultivating their reason, to any great height ; we should contemplate that frightful picture of deformed humanity, which has induced many to believe that man is really meant by nature to be even a *vitious* being ; than which nothing, as has been observed, is farther from our opinion.

The examination however of the accounts of savage life is demanded by our subject, because it has been sometimes supposed one of the most certain methods by which we may discover what our nature really is. Men, it is contended, are so much the Slaves of habit and prejudice, that it is very difficult for them to reason upon things with that freedom, and as it were, *nakedness* of mind, which truth demands for its certain *developement*. And hence many philosophers, in their researches upon

(a) Those who would go deep into this history of opinions may read the latter part of Barbeyrac's Pref. and consult Stanley's Hist. of Philos. and Bruck. Hist. Philosoph.

this

this subject, have preferred the lessons drawn from the opinions and customs of men, who approach nearest to the rude state of nature, to the more splendid, but less certain documents which are presented by a cultivated State of Society. Hence also arose the Theory of the State of Nature itself, which many have imagined, in order the better to set before us the deductions of their opinions.

If however, as we have contended, it is FACT which must determine all these points; we must pay no regard to the mere *theories* of what man *would* do in this state: but confine ourselves to what he is known to have done, in those circumstances in which he has *actually* been viewed.

But should we do this, the savage state is the most unfortunate of all others which writers could lay hold of, in order to support their opinions concerning the *natural obligation* upon *all* men to pursue any particular system of morals; since it is notorious that there is no rule so sacred among mankind, (if by mankind we mean *civilized* people,) no duty so venerable, no conduct so beautiful, as not to be rejected almost invariably by Savage Nations,

tions, and their very opposite substituted in their places.

It was held by SUAREZ, (b) that all the crimes of the Decalogue, are crimes against the law of nature. There is hardly one of them, that is not practised, and that almost invariably, by those who approach nearest to what is called a state of nature. They have a variety of Gods, and set up graven images; of the holiness of the seventh day, they can have no idea; if they honour their fathers and mothers, they do it at least in a way which fills civilized people with horror: since they knock them on the head, or feed upon their bodies and entrails, (than which it would appear nothing can be more revolting to nature.) (c) Their murders, their thefts, their adulteries, (attended sometimes with circumstances

(b) Ut Sup. p. 53.

(c) The *Tartars*, says Hackluyt, have a strange, or rather miserable kind of custom, "for when anie man's father deceaseth, he assembleth all his kindred, and they eat him." (Voyages i. 59.) The people of *Tibet* used to eat the carcases of their parents, not from want, but that for pity's sake, they might make no other sepulchre for them than their own bowels; (Id. i. 116.) and even so late as 1253, they continued to make drinking cups of their skulls. (Ib.)

stances of horror,) (*d*) and their covetousness of other men's goods, are too universally known to need much amplification.

It is held that the law of nature obliges men to respect each others property. The time was, and is, when amongst vast nations of men, to plunder, not from one another, but from all the rest of the World, was considered

The Africans are said to have fed constantly on the dead bodies of their friends; (Dapper ap. Picart. 4. 476.) and the Floridans, the Mexicans, and the Caribs ground the bones of their relations to powder, and drank them. (Id. 3. 133. 141. 166.) The Islanders of *Socatara*, when their friends are dying, do not wait their last moments, *but bury them alive*. (Id. 4. 503.) To this head may also be referred the noted custom of the Indian widows, of burning themselves with their husbands' bodies, and of many people on the same continent, among whom, when a husband or wife dies, it is a point of honour for the survivor to be buried with the corpse. The inhabitants of *Java* were not content to destroy their old men, or such as could not work, but carried them regularly to a publick market, and sold them to the Anthropophagi. (Id. 4. 136.)

(*d*) Among the Banians, an extensive sect that spread themselves through all the provinces of India, (Broughton's Hist. of Relig. Voc. Ban.) the Husband possessed his Wife only the first night, and afterwards all his Brothers alternately to the seventh, if there were so many, during the seven nights after; and the husband could not claim his wife exclusively from his brothers, but she and her issue were

sidered as the highest duty, and success that way, the highest praise. (*e*)

were common to them all. (Picart. Cerem. Rel. 4. 149.) The Moguls kept their Women in common, both Mothers and Daughters upon principle, (Id. 4. 364.) And the like custom is recorded by Cæsar to have had place among our ancestors in Britain. “Uxores habent denique duodenique inter se communes, & *maxime* fratres cum fororibus, et parentes cum liberis;” &c. (De Bell. Gall. 1. 5.) So also the Otahietans, among whom, in addition to the almost universal licentiousness of the women, there existed a horrid Society or Club, in which all the women were not only common to all the men, but the children were destroyed as soon as born. (Cook’s Voyages.)

(*e*) Many nations are known to subsist by the pillage of Travellers who pass through them to other countries, as the Arabs, and many of the Tartars; The Malays are nearly all pirates; and so formerly (nor were they ashamed of it) were several nations of antiquity; Thucydides observing that among the ancient Greeks to be asked whether a people were pirates, was not to reproach them. The Solitary Indian who was met by Captain Cook in Dusky Bay in New Zealand, being presented with hatchets, and asked what he would do with them, said he would go and kill men. (Foster’s Voyage.) The king of *Benin*, in Africa, upon ascending the throne, massacres numbers of his subjects in honour of his accession. (Picart. 4. 450.) The *Guages*, a people of the same country, when they go to war, elect and consecrate a General, who at a sacrifice is presented with a hatchet, with which, as a proof of the prowess to be expected from him, he is to cut down a youth that is brought to him at a blow. (Id. 4. 472.) The Scandinavians waged universal war: but we shall have occasion to observe these points more particularly in the history of the Law of Nations.

It is held, that parents are to protect and cherish their children. Numerous are the instances, where children are exposed, or sold to slavery, or wantonly put to death, and even *eaten* by their parents, without that *necessity*, which alone can bear the semblance of a reason for it. (*f*)

(*f*) Among the Mexicans, if a Mother died while suckling, and in Madagascar if in child-bed, the child was put to death, in order to prevent its being an orphan. (Picart. 3. 176. 4. 510.) In Bengal, formerly, if a new born child refused the breast, it was exposed a whole day upon a tree in the woods, to the mercy of the Crows and Insects, and taken down in the Evening. If it still refused, it was exposed a second day, and if it refused a third time, it was thrown into the *Ganges*. (Tavernier's Trav. 1. 3.) The *Korashites* destroyed their daughters, thinking many of them a nuisance; and when the mothers were in labour, they were carried down to a grave side, where if the child was a female, she was instantly buried alive. (Picart 6. III. confirmed by Pococke.) The Inhabitants of *Caucasus*, made a trade of their children, and take many wives for the express purpose of *producing for the market, in the same manner as if they were cattle*. (Chardin's Trav. ap Harris. 1. 865.) The Amazons are said to have mutilated their male infants as soon as born, in order to prevent their being formidable to them. And to this head may be fairly referred the shocking custom so familiar with our own days, of emasculating children for the purposes of Jealousy in the *East*, and of amusement in *Italy*; which latter is still more unnatural, since the preservation of a wife's chastity is of more consequence, than the gratification of a mere passion for music.

It is said, that USURY is forbidden by this law. Yet nearly the whole World, concur in the practice of demanding interest for money, and the virtuous BRUTUS himself, so celebrated *for giving every man his own*, was one of the most noted Ufurers of his time.

It is held, that nations should do as little harm as possible to one another in war, consistent with their mutual interests. Yet who shall reconcile this with the horrid custom so prevalent among Savages, of eating prisoners out of revenge; nay of refining their taste on this point, and taking pains in the preparation, in order to render the repast more exquisite? (g)

(g) The ancient Cannibals of *Ireland* are said to have considered the posteriors of boys, and the breasts of women as the daintiest dish. (Speed. 167.) The Brazilians would not eat their prisoners till they were fat, and of a certain age; and if any one, destined to the slaughter-house, was lean, he was carefully fattened. During the interval, (probably with a view to bring him sooner into good plight) he was allowed every sort of amusement, and even a woman for his companion; who so far put on the appearance of a wife, that when he was actually butchered, she howled and wept as if she had lost her best friend; but when he was cut up, she partook of the feast with her countrymen. (Picart. 3. 183.) The Antis, a people of South America, cut their prisoners piecemeal *while alive*; and the women, smearing their nipples with the blood, gave them their children to suck. (Id. 3. 199.)

It is asserted, that the law of nature obliges us to obey our Sovereign, so long as he does nothing contrary to natural right.—What that natural right exactly is, has puzzled, or at least divided, all the sages who have investigated it—Thus, when the FRENCH wished to overthrow their old constitution, the foundation for their power to do so, was sought for in an account which they drew up, of the rights of man. When they overthrew their new constitution, they found they had been wrong in this account; and they therefore employed another set of Sages, to draw up a second; not to mention the spreading and most pernicious opinion, that because the people are, (what no one can contradict,) the fountain of all power, the people may therefore destroy the government which they themselves erect, as often as they please, and merely because they please.

It is asserted by one set of writers, that we are bound in *all* cases whatsoever, to speak the truth. By another, it is however permitted to deceive, when a man asks for information for a bad purpose; as in the case of a mad or passionate man, who asks you where his enemy is, in order to destroy him.

And thus, concerning all, or almost all these duties, which it is supposed are enjoined with so much certainty and plainness by the law of nature, there is a wide difference in the opinions, and a still greater difference in the *deliberate* practices of mankind ; from the *uniformity* of which practices alone, they can be said to be *universally* binding.

What then are we now to think of those momentous propositions of the profound BUTLER and others, which could they be made out with *universality* and *truth*, would most undoubtedly decide the whole question ? —I mean that the *perception* or *principle* of CONSCIENCE, is sufficient to point out to a man, the moral good or evil which attends every part of his conduct ; that obligations to the practice of virtue, drawn from a review of our nature, are really no more *than appeals to every man's heart, or natural conscience, in the same manner as the external senses are appealed to for the proof of things cognizable by them* ; And that if any plain honest man, before he engages in any action, were to ask himself whether what he is about to do, is right or wrong, *he would be able to answer the*

question agreeable to virtue and truth in almost any circumstance.

That there is such a perception as CONSCIENCE, and such a feeling as SHAME, cannot be denied ; but may we not from what has just been related, affirm with some degree of reason, that they are *mutable*, and vary with the varying ideas of man concerning what is duty ; that they are made to depend upon the *prejudices* of his education, or at least cannot be distinguished from them, and therefore that they are the mere compunction which he feels for having done something which shocks those prejudices ? of course, that they cannot go the length of forcing *all* mankind to the observance of *one particular set of morals*, which, it cannot be too often remembered, is the sole question ? (*b*)

In

(*b*) They who contenting themselves with superficial and transient views, deduce the difference between good and evil from the *common sense* of mankind, and *certain principles that are born with us*, put the matter upon a very infirm foot. For it is much to be suspected that there

In this point of view therefore, the question concerning Conscience and Shame, (as they are supposed to enjoin a particular scheme of duty,) resolves itself into, and indeed becomes, that other celebrated question of the Moral Sense, or the *Innate knowledge of right and wrong*; concerning the existence of which, it is known that men of the first Abilities and Judgment have doubted.

Into this celebrated enquiry, it is not my intention to enter, since it would be but a vain expence of time when so many persons of learning competent to settle it, (if it could be settled,) have failed in drawing any absolute conclusion upon it.

It will perhaps however be at least safe to conclude with an author of deserved reputation for knowledge in the science of morals, —“ Either that there exist no such instincts there are no such *innate* maxims as they pretend, but that the impressions of education are mistaken for them; and beside that the sentiments of mankind are *not* so uniform and constant, as that we may safely trust such an important distinction upon them.—Wollaston, *Relig. of Nat.* p. 23. 6th Edit.

“ as

“ as compose what is called the *Moral Sense*,
 “ or that they are not now to be distinguished
 “ from *prejudices* and *habits*; on which ac-
 “ count, they cannot be depended upon in
 “ moral reasoning.” (i) Should this conclu-
 sion be nearest the truth, the upholders of
 the natural law, *as far as it concerns one certain*
set of actions for the whole world, must lose
 the support which they wish to derive from
 this principle; which indeed, could it be
 satisfactorily made out, would preclude the
 necessity of every sort of enquiry upon the
 subject.

Upon the whole then, if we consider man-
 kind as totally independent of the control of
 civil institutions, and destitute of those in-
 estimable advantages concerning the inten-
 tions and providence of the DEITY, which
 his goodness has *revealed* to us; it would
 appear that the law of nature, as far as the
 particular ramifications of morality are con-
 cerned, is like the moral sense itself. That
 is, either it does not exist at all, or it is so
 confounded with our prejudices, and habits,
 and peculiar ideas of happiness; and so vari-

(i) Paley's Mor. Phil. B. i. ch. 5.

ously made up, according to the various casts of thought, and the varying perceptions of man, that with respect to the obligation in the *Universe* to pursue the *particular* duties which it is said to enjoin, nothing *certain* can be *satisfactorily* laid down concerning it.

It is in vain that we are referred to Reason, as capable, from its *immutability*, of giving us one certain and never failing rule, by which we may arrive at the binding principle. We have already observed, that although the laws by which reason works are *immutable*, yet unless the *premises* are settled, nothing can be made out by them; and if the foregoing account of the actions of man when left to himself, is thought sufficient to prove him a being whose nature cannot be discovered, with any great degree of certainty, to impel him invariably to the observance of *one certain System*; it will follow that the laws of reason themselves will not enable us to make out the point, any more than CONSCIENCE, or the mere consultation of our hearts and feelings; the great proof of which is to be discovered, in that multiplicity of discordant theories, (all of them equally attempted to be made out by reason)

reason) which has already been laid before the reader. (*k*)

And this may also serve as an answer to very many triumphant assertions that have been made concerning the power of reason; which can only be ascribed to the mistake of those who make them, in not seeing that even for REASON to discover any truth, it is necessary that the truth of the *premises* should be already allowed.

Hence therefore, when BURLEMAQUI affirms as he does, (*l*) that many reasonings and customs which appear adverse to *his own system*, are mere deviations from the right rule; he does not consider that those very

(*k*) Puffend. 2. 3. 20. has the following passage, La Raison n'est pas à proprement parler, la Loi Naturelle, mais seulement un moyen de la connoître, si nous le mettons en usage, comme il faut. Now who is to answer for what is *comme il faut*? Montaigne goes into the other extreme, (Essais. l. 2. ch. 12.) And Wollaston confesses that in this talk concerning *right reason*, room is left for many disputes and *opposite right reasons*, and nothing can be settled while every one pretends that *his* reason is right, —Relig. of Nat. p. 23.

(*l*) Burlemaq. Du D. Nat. 2. 6. 8.

reason.

reasonings and customs must be consulted, in order to ascertain what the right rule is.

BARBEYRAC falls into the same mistake, though he assumes a more regular appearance of argument, when he says that particular tribes of men may be compared to the servants of a master going a journey, who leaves certain orders with those servants, easy to be understood and to be executed, but which they do not obey. In which case, says he, they may afterwards fall into great disorders from the want of consulting them, and although they may have every good wish to do what is right, still they are not less liable to be blamed, nor less worthy of punishment upon his return. (*m*) In this illustration the point in question is assumed. Since the difficulty is to discover what the orders of our master may mean, even *after* having consulted them; and the very circumstance of our confusion proves that they may be misunderstood. It is equally assumed by him in another place, where he says that men of

(*m*) Barbeyr. Pref. to Puffend. p. 14.

understanding have *abused* their leisure and talents, in broaching doubtful points. (n)

Hitherto we have viewed the nature of man apart from all considerations of religion whatsoever; not merely from those *revelations* which God in his bounty has bestowed upon the world; but those *general* sentiments of a deity, which compose what is commonly called *natural* religion.

And we had good reason to do this; since two of the weightiest writers upon our subject have supposed, that all the duties, the obligation of which we are examining, are commanded by the law of nature, and are therefore binding upon *all* men, *even though they should be impious enough to deny the very existence of a deity.* (o)

Graver considerations however present themselves now for discussion. The difficulty, not to say impossibility, of deriving any particular system of morals, (obligatory

(n) Barbeyr. Pref. to Puffend. p. 17.

(o) Vide ut sup. Vattel Prelim. Sec. 7. & Grotius, D. J. B. P. Prolegom. II,

upon *all*) from *natural feelings* alone, or the dictates of reason occupied merely in analysing those feelings; has induced the greater number of writers to wave the point of a *total* want of religion, and to admit that the idea of a Deity must enter into the composition of the law of nature, in order to render it binding. Thus it is confessed, that however clear the dictates of reason may appear, there is no obligation upon man to comply with them, without having recourse to something higher. (*p*)

An important and very reasonable theory is therefore set out, (the effect sometimes of

(*p*) Cependant pour donner force de loi aux maximes de la raison que nous avons établies, il faut, comme je l'ai dit, supposer ici un principe *plus relevé*. En effet, quoique leur utilité soit de la dernière évidence, cette considération seul, ne sert pas assez forte pour convaincre l'homme qu'il est dans une nécessité indispensable de les pratiquer, toutes les fois qu'il voudroit renoncer aux avantages qui reviennent de leur observation, ou qu'il croiroit avoir en main, des moyens plus propres à avancer ses intérêts. (Vide Barbeyrac's Puffend. l. 2. ch. 3. Sec. 20.) Again, Sans la Divinité, on ne voit rien qui impose une nécessité indispensable d'agir, ou de ne pas agir d'une certaine manière. Pref. 23.

most

most profound deductions,) by which it is held, that the obligation in question arises from God himself; who in quality of Creator and Conductor of human nature, *prescribes* to man with *authority*, the observance of the law. (q) Being the author, it is said, of nature and reason, whatever is commanded or forbidden by them, is commanded or forbidden by *him*; not that he is supposed *ab initio* to have revealed himself sensibly to the world, or to have pronounced certain things to be good and others to be bad, and to have commanded the one and forbidden the other, in *the declared quality of* LEGISLATOR; but merely, and by inference, as the author and governor of nature. (r) All this is made manifest,

(q) Il faut donc nécessairement poser pour principe, que l'*obligation* de la loi naturelle, vient de *Dieu* même, &c. Id. Ib.

(r) Grotius (D. J. B. P. I. I. 10. 1.) makes Natural law to flow from God as the *Auctor* Naturæ; and this sentiment was broached long before him by SUAREZ in the following passages: Ergo sine dubio, Deus *Effector*, et quasi *Doctor* legis naturalis. Non tamen inde sequitur, ut sit Legislator, quia Lex Naturæ, non indicat Deum ut præcipientem; sed indicat quid in se bonum et malum, sicut visio talis objecti, indicat illud esse album aut nigrum. Et ut effectus Dei, indicat Deum ut Auctorem, non tamen ut Legislatorem;

fest, they affirm, by reason alone; and not only this, but the end he proposed to himself in the creation of the world is demonstrated, *through the same medium*, to be his own GLORY, as well as the happiness of men; which glory they go on to say, consists in manifesting his perfections, his power, his goodness, his wisdom and his justice. (s) Thus there is no occasion for a particular REVELATION to enforce the law; since it is indifferent whether God clothes himself in a

Legislatorem; ergo consendum erit de lege naturali.—De Leg. ac Deo Legislat. l. 2. c. 6. Sec. 2.

Again. Legem naturalem omnino positam esse in divino imperio, vel prohibitione, procedente a voluntate dei, ut Autore et Governatore, &c. Id. Sec. 4.

See also the whole of Cap. 6. l. 2. of Suarez, where he considers the question *An lex naturalis, sit vere lex divina præceptiva?*

(s) La fin que Dieu s'est proposée par rapport à ses Créatures, et en particulier par rapport à l'homme, ne peut être, d'un côté que sa Gloire, et de l'autre, que la *perfection* et le bonheur de ses créatures, autant que leur Nature ou leur Constitution les en rend capables. Ces deux vues si dignes du Créateur, se combinent, et se réunissent parfaitement. Car la Gloire de Dieu consiste à manifester ses *perfections*, Sa *Puissance*, Sa *Bonté*, Sa *Sagesse* et Sa *Justice*.—Burlem. Du D. Nat. 2. 2. 3.

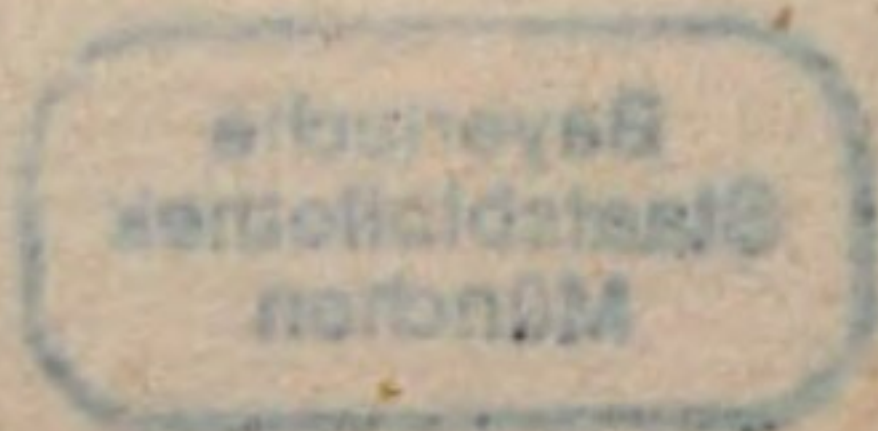
human form, and pronounces it with his own mouth ; or makes use of the intervention of some inspired person ; or *merely contents himself with discovering his will in the simple precepts of right reason.* (t) Nay farther, although all the world should not be able to make out these precepts, still, it is held, that all the world are not the less bound to observe them. (u)

To this reasoning however, (if it is meant to go the length of obliging *all* mankind to the observance of one particular set of moral actions,) the same arguments are applicable, as were applied to the theory of an uniformity of perceptions and feelings.—For if the *fact* actually is, that mankind do *not* agree in all these particular deductions respecting natural

(t) Puffend. l. 2. C. 3. Sec. 20.

(u) Mais que qu'une Loi pour avoir force d'obliger, doive necessairement être notifiée à ceux qui dépendent du Législateur ; & que tout le monde ne soit pas capable de découvrir le véritable fondement des loix naturelles, et la liaison necessaire qu'elles ont avec la nature humaine, ni de les deduire methodiquement des principes de la raison : *Elles ne laissent pas pour cela d'obliger tous les hommes ;* &c. Puffend. Ib.

religion,



religion, it cannot be expected that the obligation derived from that religion to obey one particular moral system, is to be *universal*:— And I am free to own, that what is asserted, is above my comprehension, that although these deductions are not to be made out by every one, still, that every one is bound to act as if they were. For it is thus supposed in the same breath, that religion is only to be made out by reason; and yet that if it is not so made out, it shall still exist in all its authority.

That there is such a thing as religion, distinct from REVELATION, few indeed can venture to disbelieve. That *all*, or nearly *all* persons have thought *alike* of it, is too plainly against experience to need much proof.—Yet it should be demonstrated that all, or nearly all, have had the *same* ideas of it, before any use can be made of it to shew that the obligation upon *all* to observe one *particular* and *certain* set of duties, can be derived from it.

Now it is of no consequence to be able to demonstrate *to ourselves*, the absurdities of all

religious notions opposite to our own. That demonstration will have the effect of producing obligation upon *us*; but can never impose an obligation upon others who do not, or can not see the force of it; and should others, setting out from different premises, arrive at different or opposite conclusions; there will be an equal obligation upon *them*, to the performance of things directly opposite to what we conceive it a duty to practise *ourselves*. In vain therefore is it said, or demonstrated ever so plainly, to their own satisfactions by particular men, that there can be but one notion of a Deity, if such a proposition means to extend the impossibility of their being *several* notions of it, to the *whole* of mankind; since (according to our old observation) it is *fact* alone which must determine that point. Speaking accurately, we may fairly say that among CHRISTIANS, or persons who see elementary things in the same point of view, there must be a conformity; but whether that conformity must be *universal*, among all mankind, whether Christians or not, we can only determine by analysis, (if I may so say,) that is, simply by examining the fact, whether Men *universally*

versally see elementary things in the same point of view. (w)

Those who have made this examination, are not to be told the immense diversity of sentiment to be found upon this most interesting subject : and whether we take the uniform difference between savage and civilized life ; or the difference between the notions of civilized men themselves ; we shall find there is nothing so distant from conformity, as the opinions which we shall there be able to discover,

The naked and solitary Indian, who had beheld and revered the course of the Sun and Moon ; had trembled at the lightening, and listened fearfully to the storm ; though he might be convinced there was some Power in the universe far superior to his own, could hardly arrive at those conclusions concerning the *intentions*, the *bounty* and the *justice* of providence, which are supposed by the argu-

(w) It is the same argument with that which holds the necessity for an uniformity of premises, in order for Reason to work in one and the same manner.

ment to flow from nature alone ; far less would he, or does he imagine, that he is bound to observe those actions which *civilized* men call moral, by the absolute commands of a Deity, of whom he is known to have had such grotesque, and often such horrid ideas.

Now according to the whole tenor of the foregoing arguments, we say it is fair to suppose that *uncivilized*, as well as *civilized* nations believe the religious notions which inspire them, to be the dictates of their nature ; and although *civilized* reason should demonstrate, ever so much to its *own* satisfaction, that *uncivilized* minds are wrong in their ideas ; yet unless the latter agree that they are wrong, nothing satisfactory can be determined.

The atrocities and disgusting practices that every where take place under the notion of religion, among nations that are held to be *uncivilized*, are too notorious to need much descant.

It is sufficient to observe, that if religion *distinct from Revelation*, is supposed to enforce the duties of brotherly love; of universal philanthropy; the preservation of our lives; and the general peace, and good order of mankind; it is well known that the religion of men in certain situations, has almost uniformly produced the very reverse of all these. The necessity of dying violent deaths in battle; (x) or upon the tombs of relatives or masters; (y) the immolation of captives and strangers to Gods known, and unknown; the slaughter of fellow-creatures to the manes of friends; the offering of our

(x) The religious duty of all our Scandinavian Ancestors, whose paradise could only be obtained by such means. Vide infr. chap. vii.

(y) The custom of the Indian Widows already taken notice of: Of the Inhabitants of Agag, in Africa, the wives of whose king are all forced to poison themselves upon his death. (Picart. Cerem. Relig. 4. 495.) of the Floridans who buried Slaves with their Masters. Id. 3. 133. and of great variety of others, particularly the African Nations, as is well known.

very children, and that in a manner the most horrid and barbarous (z) ; the most shameless viola-

(z) The Macaraguans, the Mexicans, the Peruvians and Formosans, sacrificed all their prisoners of war. (Picart. 3. 147. 168. 4. 173.) At Campeachy the Spaniards, when they visited it, found Idols of horrid shapes, and near them several dead bodies newly sacrificed. (Conq. of Mex.) The antient Marsellois used even to pamper their victims for a whole year, in order to fatten them before they sacrificed them. (Pic. 3. 148.) The Inhabitants of Tanchuth had a Goddess whom they called Manipa, who had nine heads, and to whose honour, on certain days of the year, a stout young man used to sally forth into the streets and kill every one he met, and their bleeding bodies were immediately borne an offering to this terrible deity. Aristomenes, the Messenian, sacrificed three hundred Spartans together, with their king Theopompus, to Jupiter of Ithome. The bloody sacrifice made by Achilles to the manes of Patroclus, must be well remembered: Even the wife Themistocles offered sacrifice of Persian Captives to obtain success against that nation. The Carthaginians it is well known used to offer their Children to Saturn, by placing them on the hands of the Idol, which by being inclined downwards let them roll into a burning furnace below. Bacchus had an altar in Arcadia, upon which young Damsels were beaten to death. The Mexicans adored an Idol made of all the seeds of the earth, kneaded with the blood of young children, whose hearts were torn out of their bodies and offered as an acceptable gift to the Idol thus made. (Pic. 3. 147.) They had also a Goddess called

violations of decency ; (a) are the characteristic barbarities of the Pagan religions.

It

called *Tozi*, whose absurd history is, that she was deified by their great God *Vitzliputzli*, who made them first demand her of her father as Queen ; she was then put to death, and flayed, and a young man covered with her skin, and thus being translated from Earth to Heaven, demanded the cruellest sacrifices ; namely, human Creatures. (Conq. of Mex.) When the corn began to spring among these people, they sacrificed a boy and a girl to *Tlalock*, the God of the Waters. When it was two feet high, four children ; when they entered the great lake on a festival, a boy and a girl were drowned in honour of it ; (Pic. 3. 154.) and when they went to war, five boys and as many girls, three years old, were offered to their God *Quitزالcoalt*. (Brought. voc. *Quitزالcoalt*.) In these cruel sacrifices of children, they were imitated by their neighbours the *Peruvians*. (Pic. 3. 188.) and the same custom was pursued by the *Formosans*, who believed that the souls of the wicked passed into Dæmons, whom they were bound to implore with sacrifice and supplication, the former of which consisted often of Infants. (Descrip. of Formos. ch. v. 17.) The *Ostiacs*, a set of Tartars, worshipped what they called the old Man of Oby, to whom when they went a fishing they offered prayers for success : but if they failed, they stripped him naked, whipped him, and threw him into the dirt as an old, impotent, despicable God. (Brought. voc. Oby.)

(a) The Priestesses of Formosa, after devout prayer, used to strip themselves naked on the top of the Pagoda, and put on the most lascivious gestures, in order the better

to

It is said however, that these are either degeneracies and corruptions of our reason; or the notions of men who have never improved their faculties by the advantages of civilization, which if they had possessed, it is affirmed they would have thought as we do: (b)

For a moment let it be so, and the point we labour at is therefore accomplished. For when we talk of the world we shall then only mean the *civilized* world; and not only

to allure their Gods to hear them. (Pic. 4. 270. Brought. Hist. of Relig. voc. Juibas.) The Houames, a religious sect of the Arabians, after prayers in their tents at night, used to cohabit in the dark with the first person they met, whether father, mother, brother or sister, (Ricaut. Hist. of Ott. Emp. and Thevenot's Travels.) The Moabites and Midionites, people far from a state of Savagism, were reproached with worshipping the famous Idol Baal-Phegor (to whom even Solomon erected an Altar,) in a manner so disgusting "eo quod distendebant coram eo foramen podicis, & sterqus offerebant." (Broughton, voc. Baal, Pheg.)

(b) Dira-t-on que ce fussent la des loix du Droit des Gens, qui obligassent véritablement les Nations? Il faut plutôt les regarder comme des pratiques barbares, dont toute Nation juste et *bien policée* doit s'abstenir. (Burlemaq. Du D. Nat. 2. 6. 8.)

that,

that, but the world civilized after our own ideas ; since many of the examples quoted, are taken from nations comparatively advanced in improvement. Thus, a difference is made between two parts of mankind ; and what we held is found to be true, that it was an inaccuracy to say the laws in question *as far as they related to a particular system*, were binding upon ALL.

But I fear we cannot stop here, since even if we confine ourselves to what we call *civilized* life ; we shall find as much diversity in the opinions of men who have dedicated their lives to the cultivation of their reason and the study of mankind by travel and meditation, as between the notions of savagism and refinement.

The learned reader is not to be told the various absurdities, the imaginary visions, and the sometimes impious opinions, that have been sent abroad under the form of Theories of Religion, by all those who have lived, or live without the benefit of REVELATION.

One set of the antient Philosophers, believed the world to have been formed by the Gods

after much labour. Another by the fortuitous concourse of atoms. The one trusted in a certain providence, that was always at work for the protection of the wise; The other, that the Gods, if there were any, gave themselves no trouble about mankind, but busied themselves solely with their own pleasures. A third set, upheld the doctrine of necessity and predestination, which renders all care about our actions useless. A fourth conceived the transmigration of souls; and almost all concurred in a plurality of deities, the licentiousness of whose manners, and whose violent and human passions, must have generated ideas of them, which it is not more absurd to imagine of an all wise and just Deity, than they would be incapable of producing any good effect upon morals.

Whole tribes have been known, as well civilized as uncivilized, to have no idea of God or Religion at all; as the Inhabitants of Soldania in Brazil; of Boranda, and the Caribbee Islands, and the great Sect calling themselves by way of distinction the *Learned* among the Chinese; a circumstance much dwelt upon by Mr. Locke, to prove the non-existence

existence of Innate Ideas. (c) In the Empire of Japan there is a religion called the Sinto Religion, the followers of which place their whole happiness in present and sensual enjoyments. (d) The Turlupins, an infamous Sect of the fourteenth century in France, seemed to imitate the conduct of the antient Cynics, in holding that they ought not to be ashamed of publicity in the performance of what was enjoined by nature: they also taught that they were arrived at a state of perfection, and were freed from all subjection to divine law. (e)

One proportion of mankind believe in a principle of good, another in a principle of evil. (f)

(c) Ess. on Hum. Und. B. i. ch 4. Sec. 8. It is right however to mention that modern discoveries affirm the *Literati* of China to be Theists.

(d) Broughton. voc. Sintoists.

(e) See Mezerai. ch. 5.

(f) The doctrine taught by the Manichæans; (Bayle voc Manes)—and the Magi of the Persians; the latter of whom characterized the two principles under their famous Gods Oromasdes and Arimanius. (Broughton. Hist. of Relig. voc. Magi.) Oromasdes was supposed to have created the other, merely because, having no one to oppose him, he could acquire no glory. (Id. voc. Arim.)

The

The first imagine every thing is for the best ; the last that we are born to be miserable. The Egyptians (a cultivated people) worshipped almost as many Gods as there were Animals. Many other nations of Africa pay Divine Adorations to Serpents ; many of them to the Devil. The Persians worshipped Fire, the Egyptians Water. (g)

In *Formosa* it is thought contrary to religion, and the law of nature, for women to bear children before six and thirty. Yet they are absurdly allowed to marry, and if they prove pregnant they apply to a priestess who vio-

(g) The God of their Waters was *Canopus*, concerning whom a ridiculous legend is extant. The Chaldæans upholding the superiority of their God Fire above all other Gods, the proof of which they deduced from the uniform power of fire to destroy every thing thrown into it ; an Ægyptian Priest made an Idol of Canopus with a large earthen belly pierced full of holes, which were stopped with wax, and the Image filled with water. A contest with the God of the Chaldeans was demanded : the Image was thrown into the fire, which as it melted the wax, let out the water and was extinguished, to the great triumph of Canopus, whose fame was instantly bruited through all the adjacent countries. (Suidas voc. *Κανωπος*—& Picart, 3, 231.)

lently

lently brings away the foetus. (*b*) The *Armenians* worshipped a Goddess called *Anaitis*, to whom the daughters of the greatest men of the Country were dedicated, who as the greatest honour they could pay to her, prostituted themselves to all those who came to offer sacrifice ; after which they were eagerly courted in marriage as having acquired extraordinary sanctity. (*i*) The *Mozdarians*, a Sect of the Mahometans, held the impious doctrine that God could even be a liar and unjust ; (*k*) And the Christians themselves, whenever they have departed from the plain precepts of the Gospel, have degenerated into doctrines equally absurd, and fatal to morality. Thus, the *Priscillianists* in the fourth century, held the principle of Evil with the *Manichæans*, and that it was lawful to take false oaths in support of our interests. (*l*) The *Ophites*, in the second century, imagined Christ to have been the Serpent that tempted Eve, and therefore paid adorations to a

(*b*) Picart. 4. 276. 7.

(*i*) Brought. Hist. of Relig. voc. Anaitis.

(*k*) Id. voc. Mozdar.

(*l*) Priscillian was ordained a bishop (of Avila) and became formidable. (Baron. Ann. 381.)

112 OBLIGATION OF NATURAL LAW.

Serpent in administering the sacrament, as well as to Seven Dæmons whom they were reproached with worshipping. (*m*) The *Gnostics* (the very etymology of whose name signifies *enlightened*;) denied the world to come; held the two principles of good and evil, and a difference between God and the Creator of the world. (*n*) The *Simonians*, the followers of Magus, denied the resurrection of the body, and with the *Gnostics* and *Nicolaitans* allowed the promiscuous use of women.

Lastly, within our own view, the Legislators of millions in a neighbouring nation, when they resolved to carry the dictates of reason with respect to religion (according to *their* ideas of them) as far as they would go; ended in abolishing all notions of a future life, or of a divine moral Agent. They did the first, by voting that Death was an eternal sleep; by which they renounced the immortality of the soul: They did the last, by voting that nature alone should be the object of their worship, by which they re-

(*m*) Brought. voc. Oph.

(*n*) Id. voc. Gnost.

nounced their allegiance to any sort of Deity at all.

And thus, under the notion of a religion taught by nature and reason, (and even after we have received the light of the Gospel, if we degenerate from it,) there is nothing so absurd, so uncouth, or so wicked, as not to find support some where in the world, either in the civilized or uncivilized part of it. And hence my Lord *Shaftsbury*, at the same time that he contends very strenuously for natural virtue as forming part of our System, is obliged to own that a *false* religion wherein the character of the Deity is evil, will make EVIL to be considered as GOOD. (o) However clearly therefore we may be able to demonstrate the truth of our own system, upon principles even drawn from natural law, the force of which is evident to us; I cannot conceive how it can follow, if those principles are not allowed by all the world, that all the world shall be bound to submit to them as if they were. Natural religion therefore can do as little towards enforcing the obligation upon

(o) Inquiry concerning Virtue, 51.

all, to pursue one particular system of conduct, as natural feelings or conscience; since neither the one nor the other prevail in sufficient *universality*, to warrant the assertion that the whole world are bound by them in the same way. We may therefore not unreasonably make use of the same argument against *Natural Religion*, distinct from *Revelation*; as that which has been used against *Natural Morality*, distinct from natural religion. Some of our antagonists themselves allow that morality without religion is nothing but a house built upon the sand; (*p*) and are forced to own the inefficacy of Pagan religion, when with an antient father of the Church, they complain that it made an illegitimate separation between morals and divine worship; between mere ministers of ceremonies, and the Teachers of wisdom. (*q*)

Now then, let any man set himself to examine what may be meant by that which

(*p*) Mais faites le plus beau Systeme du Monde, si la Religion n-y-entre pour rien, ce ne sera guerres, pour ainsi dire, qu'une Morale Speculative, vous baterez sur le Sable.—Barbeyr. Pref. to Puffend. 23.

(*q*) Id. Ib.

is

is usually called MORALS, if considered as independent of revealed religion ; and he will probably find, that it does not mean merely *one* certain mode of action, as practised by particular men ; but *any* set of actions, which *any* class of men may chuse to devise, provided they do not take their rise from licentiousness, or absolute will, or caprice ; but from regular principles, followed up by practice. So that even though one class of men should be able to prove to themselves, that the principles assumed by another class are false ; yet if they cannot prove it to the satisfaction of the latter, the latter are not the less bound to continue to observe them.

And this will be evident to any one who considers the original meaning of the term morals, or MORES ; which is nothing more nor less than CUSTOM, PRACTICE, ACTION ; proceeding upon some *known* rule or institute. (*r*)

The Institute itself is indeed *universally* intended to produce the happiness, or in other words, the GOOD of those who pursue

(*r*) Gesner. Thes. Ling. Rom. voc. Mores.

it ; because the history of man proves to us, that he proposes *happiness* or *good*, as the end of all his Constitutions ; but what the Character of the Institute shall be ; that is, *what particular actions shall be forbidden, and what enjoined* ; will depend upon the varying ideas of happiness, or good, in those that form it.— That happiness is the same thing as what is so well known under the name of the SUMMUM BONUM ; and it has been well defined to be, “ a
 “ thing which is desirable ; not for something
 “ else, but for itself ; that is, it is the *end* to
 “ obtain which, every thing that is done or
 “ commanded, is but as the *means*. The Sports-
 “ man believes there is good in the *chace* : the
 “ man of Gaiety in his *intrigue* ; even the Glut-
 “ ton in his *meal*. We may justly ask of these,
 “ why they pursue such things ? but if they
 “ answer, they pursue them because they are
 “ GOOD ; it would be folly to ask them far-
 “ ther, why they pursue what is GOOD ? It
 “ would seem then, the grand question was,
 “ what was GOOD ? For whether it be the
 “ intrigue, or the chace, or the meal, may be
 “ fairly questioned, since men in each instance
 “ are far from being agreed.” (s)

(s) Harris Hermes. p. 297. 3d Edit.

Such is the opinion of a writer, of no small fame for clearness of intellect ; and upon the supposition that his opinion is just, we may carry the principle it contains, from Individuals to Nations ; and although we may discover that the end proposed by the laws, maxims, and customs, of different races of people are very different from one another, we may be warranted in observing that all of them while independent of one binding Religion, are equally *Moral*, so long as they bona fide believe that Good is their end. Hence therefore, the morality of any *particular* set of actions is not impugned, because they are objects of horror and detestation to people pursuing another set ; and those of mankind who have not had the advantage of one common religion, or one common code of laws, to prescribe to them with AUTHORITY ; may, and do often tear one another to pieces, equally and alike upon principle, and the pursuit of what, abstractedly considered, is RIGHT. For RIGHT in general terms, to use the language of one of the most sensible expounders of the Science before us, “ is nothing more than confor-

“mity to the rule we go by, whatever that
“rule may be.” (t)

“VIRTUE,” says another respectable authority, “is the conformity to a rule of life,
“directing the actions of all rational creatures
“with respect to each other’s happiness; to
“which conformity every one is in all cases
“obliged:” (u) But granting, what cannot
be denied, the obligation to conform to the
rule *once established*; still, what the rule shall
be, is left unsettled; and the obligation upon
all, to observe one particular conduct, remains
floating in as much uncertainty as ever. For
we cannot too often observe, that the con-
test all the way through, is not so much to
determine *how* obligation to obey a *par-*
ticular code is produced; as to shew that
there may be *various* codes, according to the
varying ideas of men; a position which
seems to be allowed in another work, by the
last mentioned author himself, when after
having taken notice of the disparity between

(t) Payley. Mor. Phil. B. 2. ch. 1.

(u) Bp. Law’s Pref. to King on the Orig. of Evil.

the abilities, tempers, opportunities, situations in the world, or governments under which they live, which is to be found in different men ; he emphatically adds, “ To
 “ speak therefore of *one, fixed, immutable*, and
 “ *universal* law of nature, is framing an
 “ imaginary scheme without the least founda-
 “ tion in the nature of things, directly con-
 “ trary to the present order of the WHOLE
 “ CREATION.” (w)

(w) Considerat. on the Theor. of Religion, p. 4
 “ Virtue,” says Archdeacon Paley, “ is the doing good to
 “ mankind, in obedience to the will of God, and for the
 “ sake of everlasting happiness.” (Mor. Phil. B. 1. ch. 7.)
 This definition is thoroughly sound. But the hope of
 everlasting happiness can be made out with certainty, only
 by revealed religion. Nor can there be any other motive
 from Nature alone, sufficient to oblige us to virtue, *should*
we not be inclined to it, unless it were shewn, (which never
 has been done,) that virtue is not only the best means of
 obtaining Happiness, but is in fact the same thing with it.
 The definition is no where incompatible with our System,
 and in part supports it.

C H A P III.

FOUNDATION OF THE LAW OF NATIONS.

AND thus from any thing we have yet seen, neither natural CONSCIENCE, nor even RELIGION, considered a-part from REVELATION, are able to produce that *certain, universal, and immutable* scheme of duties, which we must suppose to be acknowledged by the *whole* universe, before we can make out from natural law alone, the *particulars* of what is meant by the definition of the Law of Nations, which we considered in the beginning of the last Chapter. (a)

It was in mercy to mankind, divided, led astray, and afflicted with these discordant ideas concerning the only thing, which, if they all thought alike of it, would indeed force them to consider one another as brethren : it was to remedy, either the inefficacy of the natural law to produce a *general* and uniform virtue ; or the total loss of the law itself ; that, that high and glorious gift contained in the CHRISTIAN dispensation was bestowed upon the world.

(a) Of President Montesquieu.

By

By this, more certain indications of the power, and attributes of the Creator were given to men.

Their duty was set before them with precision, and simplicity ; and above all, reasons for it were assigned, which, where they are allowed, must put an end to all doubt, and carry obligation to the most ignorant mind.

The very existence of this dispensation, proves to us, I think, the want of power in the system called the law of nature, to enforce those moral duties in all their universality, for the universality of which so much is contended. —For why, might it be asked, was this wonderful revelation bestowed upon mankind, with all its splendid train of miracles, and martyrdoms, and the long continuation of the divine interposition, which has afforded so many handles for *Infidelity* to lay hold of : if every thing which it was meant to bring about with respect to Morals, could have been done without it ? Why also that complaint which with the greatest justice is in every body's mouth, that if Religion were banished, the whole people would be corrupted ; the practical truth of which

which is brought home to our own times in melancholy force, from the contemplation of what has passed among the French ; and the consideration that nearly all those amongst ourselves who seek to disturb the peaceful order of things, are professed Deists, or followers of Reason ; that is, whose moral principles can seldom be fixed or *generally* understood.

Now although very refined Intellect, attended with the advantages of much leisure and meditation, has sometimes been able to form a very virtuous system of morals ; and one or two were formerly able to make out something like the doctrine of rewards and punishments ; yet it was so enveloped in obscurity, and so fragile, from insufficient elementary principles, that the *generality* of men could not enter into them, because they could not feel their force ; and the generality of men can not be supposed to be bound by laws which they do not understand. Whereas there is this invariable advantage which the meanest Christian has over many of the proudest Philosophers ; that he can immediately set forth the plainest, and at the same time,

time, the most forcible motives for living a life of virtue; while the latter is often lost in paradoxes, or forced to deduce his consequences from positions of his own assuming. (*b*)

It may be said, and with great reason, that according to our own principles, the laws of Christianity itself are not binding upon those who

(*b*) The most exalted state of human reason, says Dr. Middleton, is so far from superseding the use, that it demonstrates the benefit of a *more explicit* REVELATION. For though the natural law, in the perfection to which it was carried by Cicero, might serve for a sufficient guide to the few, such as himself, of enlarged minds, and happy dispositions; yet it had been so long depraved and adulterated by the prevailing errors and vices of mankind, that it was not discoverable *even to those few*, without great pains and study, and could not produce in them *at last*, any thing more than a *hope*, never a *full persuasion*; whilst the greatest part of mankind, *even of the virtuous and inquisitive*, lived without the knowledge of God or the expectation of a Futurity.—Middlet. Life of Cicer. 2. 562. note x. Quarto.

The necessity for revelation to minds that are not able to make out the law by reason, is also acknowledged, as it were in spite of themselves, by Suarez, and Puffendorf, those great supporters of the contrary opinion. (Suarez. De leg. ac Deo legisl. L. 2. C. 4. S. 9. and Puffen. 2. 3. 20.) The latter there confesses that there is some reason to imagine that God himself *taught* the primitive men the chief heads of the law, which

who have never received them. We agree to that proposition, and it is our very point that we should do so; since we observed in the beginning, that if the Natural law was not discoverable with exactness; if it should prove to be little understood, or so incruited with prejudices or ignorance, that we could not

which were afterwards spread and preserved by Education. Those indeed who do not attribute so much as Lord Kaims to the brute ignorance which the System of the State of Nature supposes, may reasonably believe in the Creed of our fathers, and imagine that

..... God or Angel Guest,
With Man as with his friend, familiar used
To sit indulgent.

If so, a fair question may be raised, whether *all* religion was not originally revealed.—(See a little tract written by Dr. Doeg, entitled Letters on the Savage State, and addressed to Lord Kaims.) A doubt is there not unreasonably started, whether it is even possible for *Savagism* to improve, *if left to itself*. Bp. Butler himself in another work allows, that Natural Religion before Revelation, was so clogged with Superstition, “that it was totally corrupted, and in a manner lost.” (Analog. Part II. Ch. I.) Now the imperfection of Natural Law, or Natural Religion, *as the foundation of any other law*, is equally manifest, whether we say that there is really no such thing; (which we do not pretend to affirm;) or that it is not to be made out in sufficient clearness, while so foul and obscured with prejudice and superstition.

come

come at it with any certainty ; we must content ourselves with such a sort of obligation, and such a plan of conduct, as different *classes* of nations adopt, according to their different Religions or Systems of Morality. When these are known, whether they are Christian, or Mahometan, or Pagan, we may give a tolerable guess at the Spirit of the Character of the people, and the genius of those laws which govern their intercourse. When they are not mentioned ; and we content ourselves with asserting a particular, and ramified duty, *because recommended by the laws of nature and reason*, we cannot sufficiently depend upon them to be sure of the power of their obligation, or that the precise conduct recommended is in reality binding.

By shewing therefore the necessity and the superiority of the Christian Revelation, we meant simply to point out, the impossibility of the law of Nature to carry with it an obligation to pursue those duties, which are in general only observed under the obligations imposed by CHRISTIANITY ; not to assert that the latter obligations extended themselves to all mankind, even to those who were ignorant of them.

Whence then are we to derive the origin of that obligation which is supposed to bind us? Where are we to look for the rule which is to direct the conduct of Man towards Man; and of Nation towards Nation?

We have answered, to that Religious and Moral System, whatever it may be, which the different men and nations that are in the habits of intercourse with one another, consider of force sufficient to govern their various actions. Of these we may be allowed to speak with certainty, since of these, the first principles, or in other words, the premises, are supposed to be settled and generally understood by those who pursue them; while others, which are too rashly extended to all mankind; are for the most part fluctuating, and even after being fixed, are liable to be changed. It follows therefore, if our principles are allowed, that the greater number of the writers on the subject, high and deserved as is their reputation, have attempted too much in setting out from such vast and extensive principles; or in laying down the laws of Nations, as if they were the laws of the World.

General

General principles should undoubtedly be extensive ; but they should not be the less certain for being so ; and if they are too extensive, so as to become vague, or contested, the Theories which are founded upon them are liable to be misunderstood, perpetually discussed, and even overturned.

Rejecting therefore the laws of NATURE and REASON (as the sole foundation of the law of NATIONS,) because we do not conceive them powerful or fixed enough, to bear the fabric that is erected upon them ; we conclude that what is commonly called the law of nations, is not the law of *all* nations, but only of such SETS or CLASSES of them as are united together by similar religions, and systems of morality. It will depend therefore upon the *soundness*, or *unsoundness* of those religions and systems, whether *particular* nations will pursue the *particular* scheme of morals, which with *us* are called virtuous, or not. If the system is well founded, we may expect the law to be of one *certain* cast, and of a virtuous character. If it is *not* well founded, the law must be uncertain, fluctuating, and of a Character perhaps detestable to
many

many other nations. As a plain consequence it will follow, that, if two Systems are totally different, (which may sometimes happen,) (c) the CLASSES of nations which are governed by them, can have very little like a law, common to both, to direct their intercourse, and may even therefore be always, or almost always, in a state of hostility. Hence also a corollary may be deduced, that the proportion of obedience which is yielded by any two nations to a *particular* rule of conduct, *must depend upon the degree of affinity which there is between their Religions and Systems of Morality.*

With us in Europe, and the nations that spring from us, the Moral System is founded upon REVEALED RELIGION. In other words, it is the same with CHRISTIANITY itself. The great plan of our duty; the complexion of our minds; our ideas of justice; our softened manners: our laws and customs; and consequently the whole force of our moral obligation, take their rise and colour from the CHRISTIAN Religion. But if this is so in all our private relations; in the “charities of

(c) See the next Chap.

“kindred,”

“kindred,” and the character of our municipal laws ; it is but a natural consequence that the same leading and essential principles of action, should influence the whole body of our LAW of NATIONS. Various other causes have no doubt concurred to produce that difference, which in the progress of our investigation we shall probably discover between the European Law, and that of other Classes of people ; and to these we shall direct our attention in the proper place. For the present we content ourselves with barely pointing out what seems likely to be the true foundation of every Law of Nations, as it may appear to govern the different divisions of the world.

In the next Chapter we mean to come to the more particular application of these principles, and to shew how what is here only laid down a priori, and in theory, is borne out by the practice of mankind. We shall there take a cursory view of the different principles which seem to actuate various SETS or CLASSES of people, as they fall into different districts, and observe different religious and moral systems ; which if it cannot be shewn, we confess that the truth of our Theory, though

it may not be totally destroyed, will be wholly without support.

But farther also, if our principles are allowed, the Law in question, must not only be different in different districts of the Earth at present; but even in the same district, it must have varied in the course of time, in proportion as revolutions have happened in the religious and moral systems of its nations.

To the examination of this point we shall also hasten, and it will be our ultimate task, in order the better to prove the truth of our positions, to trace the whole progress and *changes* of the law among the *European* States; to attempt to point out the causes of those changes; to settle their chronology; and to mark the connection and duration of their effects.

CHAP. IV.

THAT THE LAW OF NATIONS, IS NOT THE LAW OF
THE WORLD.

WHOEVER has considered the variety of Character which is every where the attendant of Humanity ; the different divisions of Men into different districts, and almost into different species ; the diversity of customs, of religion, and consequently of morals ; the notions of right and wrong, extremely opposite in distant places ; the prejudices and manner of life, arising from Climate or geographical position: whoever has considered these things, would be led, it should seem, to imagine *a priori*, that there was a marked and pointed difference, among different classes of nations, in their mode of carrying on their intercourse together—It has a palpable effect upon the genius of their civil law, (*d*) and we may not unreasonably believe that it has the same on their law of nations ; so that when by chance, curiosity, or mutual wants, nations that have

(*d*) See Montesq. Sur les principes qui forment l'esprit gener. De l'Espr. des Loix, L. 19.

never heard at all, or heard but little of one another, come to have communication together; the manner of that communication can hardly be the same with that to which they have been accustomed—I do not here speak of the mere *ceremonial* of the meeting; for that, as might naturally be expected, would be almost as diversified as their dress or language; but of those laws, and notions of the nature of their mutual rights, which it is the interest of all who are concerned to obey, for the sake of the safety of the communication.

The History of the World, and the accounts of observing travellers, tend very much to confirm the strength of this opinion.

In some countries, *Theft*, though prohibited by the Inhabitants among one another, has been permitted towards Foreigners. (e) With
one

(e) Among the antient Germans, the inhabitants of the South Sea Islands—The Arabs, and Tartars, &c.

See also Busbequius' account of several Turkish nations which he visited, among whom he who was held an expert *Thief* was esteemed a great man, and he who was the contrary was looked upon as a mere *stock* or trunk. Qui
dextro

one nation, a *Stranger* has been received with open arms as a Citizen. By the same people, when their political situation was altered, he was reduced to captivity. (*f*) By another he has been put to death from the mere circumstance of his being a Stranger. (*g*) With a third, he is hardly permitted to land, should he come upon the coast, and never to advance into the interior. (*h*) With a fourth, it is even part of their religion to kill him if he be a Christian. (*i*)

When war breaks forth, the varieties of the modes in which it is pursued are without end. A *Roman* thought it right to give notice to his Enemy, and summon him first to do Justice, before he declared himself. An *Indian*

dextro Mercurio furatur, magnus censetur; qui nescit, ut stipes et truncus despicitur: imo vix communi luce dignus judicatur.—Leg. Turk. Epist. 3.

(*f*) Vide infra Chap. VI. concerning the Greek and Roman Law.

(*g*) By a law of *Busiris* in *Ægypt*, and the customs of the Scythians who immolated Strangers to Diana.—See Puffend. reasoning upon these customs. D. de Nat. & des Gens. 2. 3. 9.

(*h*) The law of China.

(*i*) The Mahometan law.—Alcoran, Ch. 8. 40.

will lie for weeks in the grass, and wreak his vengeance upon the offending party without any declaration at all. A *Christian* treats his prisoner with courtesy, and dismisses him *now* without ransom ; (k) A *Turk* condemns him to miserable Slavery. Vast Empires as we have seen are in the practice of *sacrificing* their Captives, in a manner the most horrid, out of duty to their Gods : Other Savages will pour molten lead down their throats, or confine them for years in dungeons in the common mode of punishment ; Others again, will tie them to stakes, and eat their mangled and half roasted flesh before their faces, out of a principle of honour. One tribe of men, will poison their weapons ; Another, will make use of none that do unnecessary mischief : Among one set of people, a *Pirate* is almost a term of honour : Among another, he is hanged as a Thief. With one Sovereign, an *Ambassador* is the most sacred of characters : With another, he is considered as a mere hostage for the good behaviour of his nation.

(k) For the account of Ransom, as it formerly stood, see Chap. 9.

This diversity of custom is endless; yet all the nations thus differing in their mode of intercourse, imagine they are pursuing a conduct warranted by Laws which are common and well known, and the contrariety is most marked between countries that are most distant, and most separated by religious opinions,

The GOD of WAR, was almost the only GOD, worshipped by our *Scythian* ancestors; and the state of their part of the world, was accordingly a state of perpetual war. To mix and to die in the battle, in order to drink from the skulls of Enemies in the Hall of ODIN, was a part of their religion, and dearest ambition; and he was disgraced who had not well earned these honours. A people however of this stamp, could never be brought to listen to doctrines, or to attend to laws which called for the observance of peace and order, such as the Christians held out, and comparatively practised. (1)

(1) See Chap. 7. on the Scandinavian Law of Nations.

When the New World was opened to the spirit and adventure of the Old, it was reasonable to expect what was found; new laws and customs, as well as a new people and language. But on that very account it was not reasonable to expect, that the intercourse between the Spaniards and the Mexicans should be governed by the same customs as the intercourse of Nations in Europe: nor, if the latter sacrificed their prisoners to their Gods, could the former fairly complain of it as a breach of the Law of Nations. Yet to the astonishment and horror of every thinking and good mind, this was one of the charges on which the innocent and unfortunate monarch of PERU, was put to death by the ruthless PIZZARO. (*m*)

Examples might be drawn out to a length, even fatiguing, to shew how opposite the general notions of States have been at various times and places, and how little it can be expected to find a similarity of sentiment or of conduct, except among particular nations

(*m*) Robertson's Amer, 3. 46. Atuhalpa was even tried by a Spanish Court of Justice.

only, few in comparison with the rest of the world.

Such nations indeed we may reasonably suppose to be governed by the same law, which is rendered the more necessary, as their intercourse is more frequent; they will naturally at least, pay higher respect to customs which are known and received, and which accommodate themselves to their own prejudices; than to others, of which they know nothing, which they do not understand, or which may even be repugnant to their dearest and most favourite principles.

According therefore to our former observation, we find that the world is for the most part *carved out*, as it were, into different *Sets of Nations*, all of them understanding one another; and the alliance is the more strict, according as they are bound by the same political system, the same interests, the same religious prejudices, or the same geographical position.

The latter is of great importance. The whole spirit and genius of a People may take
 5 their

their rise from their situation on the Globe ; and they are Shepherds, Husbandmen or Merchants, according as they find themselves placed in Mountains, in Plains, or on the Coasts of the Sea. Each Class of People may be said to have a different Law of Nations ; and with the latter this remarkable circumstance almost invariably attends them ; that that which seems the most transient, the most evasive and the most common of all the works of nature, becomes a fixed and permanent property, through the avarice of man. Wherever a spirit of commerce has prevailed, the Sea has become as much an object of contention as the Land. The possession of certain Fisheries, and the right to a particular Navigation, have every where been points of the utmost importance in the Politics of the Nations interested, and given birth to certain regulations and laws, wholly indifferent, if not wholly unknown to Nations of an opposite character.

The account and history of *all* these various laws in different parts of the world, and at different æras of improvement, would be a work of no mean consequence to a mind of
enlarged

enlarged enquiry; (n) it is not however the object of the present dissertation to attempt it.

Thus then, distinct Classes of Nations have distinguishing Sets of customs.

The North American INDIANS have one; The INDIANS of the South Sea another; The NEGROES a third; the GENTOOES a fourth; The TARTAR Nations a fifth; The MAHOMETANS a sixth; The CHRISTIANS a seventh, and so on.

With the two last, their Religion had in other times an evident, and if I may so say, a *formal* effect, upon their Law of Nations. The follower of MAHOMET was commanded by the volume of his duty (o) to wage war on Christianity, and to slaughter its professors;

(n) A slight enumeration of some few of them has been made by Dr. Falconer, in his Remarks on the Influence of Climate. B. 6. Chap. 3. Some of them also are to be found scattered up and down the bulky work of Anderson on Commerce.

(o) Alcoran, Chap. 8. 40.

and

and his very mode of making profelytes was by the sword. (p)

On the other hand we find nothing so common in the public affairs of Europe, (more particularly in former times, when its danger was more to be dreaded,) than to take arms for the defence of Christianity against the Turks; and the Family of *Austria*, whose power and zeal in that service were greater than others, derived at one time, much profit from an attention to these prejudices. (q) Of the same nature with this, were the motives for those desolating wars known by the name of the CRUSADES; in which the extirpation of Infidels, and the recovery of a Country

(p) See Mod. Un. Hist. i. 248. Octav. In more antient days also, the profession of Christianity was the cause of enmity from the Persians to the Romans. "I will never give peace to the Emperor of Rome," (Heraclius) said Chosroes, "till he has abjured his crucified God, and embraced the worship of the Sun."—Gibbon's Dec. and Fall, Cha. 46.

(q) A compliance also with these prejudices, formerly produced an opinion in England, that it was against the Common Law to make a Treaty with Infidels. 4 Inst. 155. See the Chapter on the Influence of Treaties and Conventions.

fairly

fairly possessed according to the maxims of the world; (r) were held out as legitimate and equitable causes for war, merely from the sacredness of the prejudices in its favour. It is needless to point out how little this could be admitted by nations who never had heard the name, much less of the history, and who could not possibly understand the nature of the Divinity of Christ. (s)

The community of worship however is considered by Grotius as so great a bond of political union among the Christians, that in that part of his work which treats of Alli-

(r) The Holy Land had been in peaceable possession of the Infidels for five hundred years when the Crusades broke out.—Maimbourg. Hist. des Crois. L. I. An. 1093.

(s) To uphold the Glory of the Almighty, to recover the Kingdom of Christ, and to promote the good of the true Believers, were the professed causes of those celebrated wars, in which the West and the East were in arms against one another, with very little interruption, for a space of four hundred years; Maimbourg himself, even so far down as the last century, seems to think that they were acceptable to God. “Ou plutot,” (says he, speaking of Peter the Hermit) “que Dieu, qui avoit choisi cet instrument pour
“faire eclater sa puissance et sa gloire, &c.

Hist. des Crois. L. I. An. 1093.

ances, he holds that no *Christian* State can be excused from assisting another, when attacked by *Infidels*. (t)

This profession of the same Religion, marked out the European Nations as distinct from the rest, in various other ways. To preserve the peace of Christendom, and spare the effusion of *Christian Blood*, was always, and is at this day, a favourite and popular reason given by one State, for its interference in the affairs of another.

The Pope indeed, as the common Father of Christendom, was the directing member, or more properly, as we shall see, (u) the Despot of a very strict Alliance between States, in other respects, as independent of one another, as the most distant and unconnected Nations. Accordingly, no feature in the history of

(t) De. J. B. et P. 2. 15. 12. He possibly however means only in those cases where the existence of the common religion is absolutely threatened; as long before his time, the Turks were received into the political connections of Europe.—Vide infr. Chap. XV.

(u) Vide infr. Chap. XIII.

Europe is more striking than that vast and frequent assemblage of all the Sovereigns of Christianity, or their Representatives, in what were called the *Œcumenical* Councils. In these, many things were settled exclusive of mere points of faith ; more particularly, the precedence of Nations, the rank and power of Sovereigns, and not unfrequently their right to their Thrones themselves ; points which it is palpably the province of the Law of Nations alone to determine. (x) Rank and precedence were even made to depend, amongst other things, upon the priority of conversion to the Christian Religion ; (y) an express division was made of those who professed it, into four quarters ; (z) and the very

(x) Frederick II. one of the most active Emperors of the House of Suabia, was deposed at the Council of Lyons, held expressly for that purpose by Pope Innocent IV.—Mat. Paris. 672. But see this subject amply discussed, Chap. XV.

(y) Mackenzie's Law of N. as it concerns Precedency, Page 6.—Howel on Preced. 9, 10, 11.—See also Cotton's brief Abstract of the quest. of Preced. between England and Spain, preserved in the Harleian Manuscripts.

(z) Italy, Gaul, Germany and Britain. (M. S. Cotton's Preced. of Eng. and Spain.)

name

name of *Œcumenical Council*, according to Father PAUL, was derived, after the division of the Western from the Eastern Empire, from the unity and communion of those States and Countries which obeyed the POPE. (*a*)

Even the division of the same Religion into different sects, may sometimes produce a partial alteration in the Law of Nations, according to their tolerance or their bigotry. The superstition of the Roman Catholics, particularly in former times, had an evident effect upon some of their laws with respect to the privileges of Stranger Nations, who thought differently from themselves; and while the Reformation was in its infancy, attempts were not unfrequently made to cut off a right universally held to depend upon the Law of Nations, namely, that of Ambassadors to the free exercise of their own religion. (*b*)

It is more evident in the manner in which various Colonies have been settled, according

(*a*) Fr. Paul, in Pref. Con. d. Trent.

(*b*) Wicquef. de L'Ambass.

as the religious notions of the Settlers were liberal or confined. PENNSYLVANIA was purchased by fair treaty from the Indians, by the equitable and tolerant QUAKERS ; the Indians of South America were reduced to Slavery by the SPANIARDS, upon the pretence of converting them more easily to Christianity.

The same diversity of Spirit appears in a variety of other instances ; and whenever a conduct is adopted in the course of War or Peace, contrary to the approved customs of Europe, though consonant with the practice of other parts of the world, it is a fair ground for complaint. Thus when the Duke of *Guise*, had put some Spanish soldiers, whom he had taken prisoners, into chains ; it was made the subject of loud complaint by the Spanish Ambassadors at the Congress at *Ver-vins*, as contrary to the Laws of War, and the humanity which ought to be observed *among Christians* ; who never, said they, treat their prisoners as if they were *Turks*. (c) By the *Turkish Law of Nations*, therefore, this treat-

(c) Lettre du 26 Fev. au Roi. 1598. Mem. de Bell. et Sill.

ment was not illegal ; a clear proof that there were more laws than one. It is no doubt in conformity with this spirit also, that with some Nations we are forced to make exprefs *Treaties* to deliver ourselves from piracy and slavery ; while among our own, (that is, in EUROPE) the law observed by it, is sufficient protection without them.

Again, it is an opinion generally inculcated, and deservedly so, that from the relationship of all the World, we ought to be hospitable and kind to *Strangers*, whether they come from the East or from the West ; whether they adore MAHOMET, or CHRIST ; and this forms a very fair part of the *European* Law of Nations. The *Turks* however are taught by their religion so to hate and despise the *Christians*, that the epithet “ *Christian Dog*,” is every where bestowed upon them. It is even forbidden them in many parts to make use of so noble an animal as the Horse, and they are forced, as a mark of submission, to content themselves with the humbler *As*s, whenever they appear in public. (*d*)

(*d*) For this, and many other indignities, see Gibbon, Dec. and Fall, Chap. 51.

It

It is generally inculcated, that Strangers should be equally protected in their property with Natives; and any public violation of this rule, authorised by an *European* government, would raise an universal outcry against it among the surrounding States. A very few miles by land or sea, bring us to countries whose existence almost depends upon the pillage of Travellers; and were you to preach the observance of your own customs to a *Tartar*, or an *Arab*, he would not understand you.

There is another very strong shade of difference between EUROPE and other parts of the globe, which powerfully confirms the Supposition we have started; and that is, the remarkable opinion entertained by all European States respecting that famous part of the Droit Public, known by the Name of the BALANCE of POWER. Of this, according to the present system, the people of Antiquity knew little or nothing; and it was unknown even to modern Nations themselves before the time of CHARLES the Fifth. There is indeed a kind of natural policy, which self-preservation will suggest to all States, of uniting against one common powerful enemy,

whose hostility is open and flagrant ; and this is to be met with throughout the World : But no SET of NATIONS, that I have yet heard of, except the moderns of Europe, have laid down a *System* to prevent *long before hand*, even the *just* Augmentation of any particular Power, which in the end might prove detrimental to the rest ; nor were any SET of NATIONS before these, so connected together by TREATIES, ALLIANCES, GUARANTIES, and various other ties, that the present state of things can hardly be altered without the common consent. The fear of such an accession of power as may prove fatal to the independence of Europe, is now held to be a fair Cause for War ; and Nations without sense of *immediate* injury, or wish to avoid *immediate* danger ; consequently, without personal hate or passion, now join chearfully in the most dreadful conflicts to which the lot of Humanity is liable ; a circumstance which may be considered as one at least of the causes of that polish and mildness which regulate the more humane mode of modern warfare.

An attention to this great variety in the common governing principles of action, which
certain

certain Communities entertain, to the exclusion of others; has drawn from the Writers on the Subject, strong *hints* of the soundness of the opinion we have adopted. I call them hints, because no treatise that I remember to have seen, has yet set it down as a broad uncontroverted proposition. But though no positive assertions are to be met with to this purpose, yet from a combination of the general views of the matter that appear to have been taken; the sense of various authorities is almost as clear to the point, as if it had been expressly asserted.

M. *De Callieres*, in his book called "*La maniere de negocier avec les Souverains*," confines this Negotiation to the *Sovereigns of Europe*. "In order the better to understand," says he, "the utility of Negotiation, we must consider *all the States of Europe as having such intimate connection together, that they seem to be the members of one and the same Republic.* (e) To this purpose also are the sentiments of other writers, as we shall hereafter have occasion to demonstrate.

(e) *De la man. de neg.* Chap. 3. but vide *infr.* the subject pursued historically, particularly Chap. xiii.

In the treatise de Foro Legatorum, by Van Bynkershoek, there is a very strong *implied* opinion in favour of our system. A question is made in the nineteenth Chapter, how far any one Nation has the right to take from Ambassadors, the privileges accorded to them by the Law of Nations. The author is clear that it has that power, provided it declares its intention before hand; for, says he, the enjoyment of all their privileges depends upon *consent*. One Nation can impose no obligation on another, nor can the consent of all the Nations in the World together, force any one free State, single as it may be, to follow their customs, if it chuses to adopt others.—This opinion is founded upon that of GROTIUS, which holds that though it is contrary to the received Law, to try an Ambassador in the Courts of the country he resides in; yet before he is received in the country, it may be *stipulated* that he shall so submit to them. (f)

VATTEL, also, adopts it in all its extent, when he comes to that part of his subject. (g)

But

(f) Grot. D. J. B. et P. 2. 18. 5.

(g) “ Voyons donc quelle obligation la coutume, l’usage
 “ reçu, peut imposer aux Nations, non seulement en ce qui
 “ regarde

But if these Authorities are allowed, it is clear that the Law may be totally altered, according to the Will of particular Nations; and if so, it can never be supposed, from the mere force of the term, that it is binding upon all the World.

If Authority however were still wanting, GROTIUS and SUAREZ, are so full to the point as almost to decide it. "The Law of Nations," says the first, "receives its force from the consent of all Nations, or at least of many of them. I say many, because there is scarce any Law, but that of Nature,

"regarde les ministres, mais aussi en general sur tout autre
 "sujet. Tous les usages, toutes les coutumes des autres
 "Nations, ne peuvent obliger un Etat independant, sinon
 "en tout qu'il-y, a donne son consentement exprès ou
 "tacite. Si quelq'une y decouvre dans la Suite, des in-
 "conveniens, elle est libre de declarer qu'elle ne veut plus
 "s'y soumettre, et sa declaration une fois donnee bien
 "clairement, personne n'est en droit de se plaindre, si elle
 "n'a aucun egard à la Coutume."

Droit des Gens. L. 4. Ch. 7.

So also Bynkershoek, "Gens Gentem non obligat, nec
 "vel omnes Gentes obligant aliam, licet solam, quæ sui juris
 "est, et aliis legibus uti decrevit."

De For. Legat. C. xix.

“ which is common to *all* the World. *Nay,*
 “ *there may even be found in one part of the*
 “ *Earth, a Law of Nations, which is not known*
 “ *in another part of the Earth;* as we shall
 “ demonstrate in its place, when we come to
 “ speak of Captivity and Postliminium.” (b)

Of the same opinion is SUAREZ, who affirms in different parts of his work, that the law in question may be changed as far as it depends upon the consent of men; that it may be changed by any particular Kingdom or Republic; and even, according to some, by *private authority.* (i)

(b) “ Jus Gentium, id est, quod Gentium omnium aut
 “ multarum voluntate vim obligandi accepit. Multarum
 “ addidi, quia vix ullum Jus reperitur extra Jus naturale,
 “ quod ipsum quoque Gentium dici solet, omnibus gentibus
 “ commune. Imo sæpe in una parte orbis terrarum *est Jus*
 “ *Gentium quod alibi non est,* ut de Captivitate et Postli-
 “ minio suo loco dicemus.” De J. B. et P. I. I. 14. I.

(i) Quarto ex dictis colligitur Jus Gentium esse mutabile quatenus ex hominum consensu pendet; in quo etiam differt ex Jure naturali. Imo dicunt aliqui posse mutari a privata auctoritate. Ratio est quia res prohibitæ Jure Gentium simpliciter, non sunt malæ de se, et intrinsece.— Suarez, De Leg. ac Deo Legis. L. 2. C. 20. S. 6.

Nam prius Jus, potest immutari a particulari regno vel republica, quantum ad ipsum, &c. Id. L. 2. C. 20. S. 7.

It is very true that *Burlemaqui* contends, that variations, when they are cruel, are mere barbarous customs, from which all just and well-regulated Nations ought to abstain. (*k*) But surely, when the very question is concerning the *universality* of a custom, and other customs are proved to exist; to get rid of them in this way, is a mere *petitio principii*; not to mention that the Nations thus adopting other Laws, have an equal right with any other, to call themselves (according to their own ideas at least,) just and well-regulated. (*l*)

Among the antient *German* People, the death of a man was not considered of that

(*k*) Du Dr. Nat. 2. 6. 8.

(*l*) We have unfortunately, in the present times, experienced too strong a proof of this. The miserable departure of the French from that humanity which has constituted the distinguishing honour of modern warfare, however execrated by all good men, is considered by themselves as an *elevation of their character*.

I have already, in the preface, disclaimed all personality or passion, in any thing I may be forced to remark concerning the French. The present example is evidently the best proof that could be cited in the simple course of the argument; and wholly, therefore, independent of all personal feelings as an Englishman.

high consequence, which the purer doctrines of Christianity, and the more regular policy of modern States give to it at present; hence every murder, however atrocious, had the penalty of a fine in money set upon it, as the only punishment. When the jurisprudential Writers, however, come to consider the Nature of the power of punishment; they all lay it down, that crimes against the Law of Nations, are punishable by *all* Nations; whether those who have received the injury or not: and among those crimes are expressly included Murder, and even Adultery. (*m*)—The doctrine is just with respect to those Nations that obey the Law; but it would be surely too much for any one to assume the power of inflicting death (the punishment commanded by it) upon a murderer of that Nation, which, like our *Saxon Ancestors*, compounded the injury for a sum of money.—Still less could it be expected that a man, whose very religion perhaps admitted of a

(*m*) 4 Institute 153. Coke there goes so far, as to call even Felony, a crime against the Law of Nations.—It would be needless to shew the injustice of punishing a Foreigner (though of Europe) for a crime, of which he might know nothing.

community of Wives, should know he was committing a crime, in merely conforming to his customs, because *other* Nations chuse, however reasonably, to consider it as a breach of *their* Law.

We have already observed, (*n*) that some authors have called incestuous marriages, in the ascending line, a breach of natural right; and they hold also, that, according to natural right, any man who has offended against Nature, may be punished by him who has not. (*o*) Now the Persians and Assyrians, as has been mentioned, in many cases, not only permitted, but held the offspring of such marriages in honour. (*p*) It would be absurd to say, that according to the Law of *all the States of the World*; any one of them could justly punish the Persians and Assyrians for these acts, however abominable!

(*n*) Chap. II.

(*o*) Grot. D. J. B. et P. 2. 20. 3.

(*p*) “ Si les Assyriens, si les Perses, ont épousé leurs
 “ meres, les premiers l’ont fait par un respect religieux
 “ pour *Semiramis*; et la seconde par ce que la Religion de
 “ *Zoroastre* donnoit la préférence à ces Mariages.”—
 Montesq. De L’Esp. D. Loix. L. 26. Ch. 14.

From

From all that has been said, a very easy exposition is to be deduced of a remarkable phrase of the President MONTESQUIEU; remarkable however only in the case, that his opinion on this subject is different from ours.

When he speaks of any Nation, or Set of Nations, as the Tartars, and others, he says, *their Law of Nations* is so and so; a clear proof that he thinks there are different laws of Nations existing in the World. Thus, says he, the law of Nations of a people who are yet in the *Shepherd* state, has for its subject, what among more civilized people is the subject of municipal institution. (q) The Law of Nations *observed by the Tartars*, is to *destroy* wherever they appear! (r)

The anonymous Commentator of Montesquieu, does not comprehend, how that can be the Law of Nations, which professedly is destructive of all Law. But the answer is plain; it means, that those people who are

(q) *Esp. des Loix*, L. 18. Ch. 12.

(r) *Id.* Ch. 20.

in this terrible intercourse with one another, *expect*, and *know* that it will be thus terrible; and this very *knowledge* and *expectation*, make it *Law*. In the same manner as the Law of *Turkey*, which vests every thing in the will of the Prince, and which therefore appears to us to annihilate *all Law*; is, in fact, to its *Inhabitants*, the Law of that Country.

We see then the effect of RELIGION, MORALS, and GOVERNMENT, not only upon the genius and laws of particular people, but upon whole Districts of the Earth; and where there are such opposing principles acting upon the minds and conduct of different CLASSES of Nations, it is in vain that you expect them *all* to conform to the same law in their public intercourse; equally perhaps in vain as if you expected the spirit of every Government, and of every code of municipal law, to be the same throughout those States which, according to us, obey the same law of Nations. When therefore we make use of the common expressions, "*the Law of Nations*," or "*the whole World*," they are seldom to be taken in the extensive sense which is implied by those terms; but always with such modifications

tions as the subject we may happen to be upon, will point out to us. Thus, in relating the transactions of Indian or African Empires, such expressions would merely mean the law of *Indian* or *African* Nations; and the *Indian*, or *African* World; and so also, in our own daily transactions in Europe, we mean by them nothing more, than the law of the *European* Nations, or the *European* World.

CHAP V.

HOW DIFFERENT CLASSES OF NATIONS MAY BE
DISTINGUISHED.

I AM here aware of a very natural question which has the fairest right to be answered before we advance farther.

If these principles are true, and the world is really so divided, as it is said to be ; the division no doubt ought to be marked and clear ;— and as every Nation assumes the right of deciding upon the law, it should be known beforehand, what CODES particular States obey, in order to prevent an unjust interference. We may therefore, it should seem, be fairly called upon to shew the exact distinguishing line, by which Nations may be said to belong to this, or to that Class.

It must be confessed that the answer to this, is not without its difficulty ; for as there is no common Sovereign Legislator ; no general appellant Jurisdiction ; it is scarcely possible

possible to point out with exactness, (or indeed any thing approaching to it,) what are the particular States that are held bound to obey any particular Code. From what has gone before however, much may be collected, which, though it may not amount to absolute certainty, will at least prove to us a pretty sure guide in the enquiry.

For example; whenever we observe many different Communities, in the habit of making *Treaties* and *Alliances* together; of holding *Congresses*, and entertaining *ordinary* or *resident Embassies* at one anothers Courts; of appealing to each others *Mediation*; (a) of deciding their differences *by one known settled rule*; (let it be good or bad;) or of carrying on War in the same mode, (be it cruel or lenient;) above all, when we see them governed by the same customs, arising from climate or geographical situation, and bound together by *one common Religion*; then, may we fairly suppose that they agree, tacitly or

(a) See Mably on the mode in which it is likely that the Turkish Empire will in time assimilate itself with the European States.—Droit. Pub. ch. 5. For the progress of these parts of the law in Europe, vide *infr.* chs. x. xiii.

expressly,

exprefsly, to obey the fame law of Nations.

One thing is decifive ; and that is, when we obferve them fearching for the rule of their duty *in the fame Codes of Jurifprudence*, and agreeing to pay refpect to the opinions of the *fame Writers* ; in which cafe, it is equal to abfolute demonftration, that they all come under the government of the fame Law. (*b*)

(*b*) Hence when we fee a Nation, or its Minifter, refufe to acknowledge authorities generally received by other States ; it is a clear fign, that it means no longer to obey the old Law of Nations : in other words that it means to withdraw itfelf from its *Set* or *Clafs*. We muft all recollect the correſpondence between the American Government and the French Envoy, *Genet*. Being told that his proceedings were contrary to the ſpirit of the doctrines of *Grotius* and *Vattel*, he replied, that he knew nothing about *Grotius* or *Vattel*, but that his conduct was conformable to the doctrines of the *French Conſtitution*. This was either ignorance, or deſign ; if the one, it can form no cafe ; but if the other, it was almoſt a direct notice, that the French meant to retire from the obedience they had paid to the Code of the European Law.—In the latter cafe, therefore, *Genet* was not a *Fool*, as he has been called, but merely conſiſtent.

With us in Europe, and the Nations and Colonies that spring from us, this has long been the practice. Things for the most part are settled and understood: the same *Laws of War and Peace*, of *Treaties*, and *Alliances*, are obeyed; the same *Maxims* are enforced; the same *Authorities* are cited; the same *Religion* unites us. It is not so with other Nations; and the proposition is thus demonstrated, that when *we* speak of the Law of Nations, we mean only the Nations of our own SET, that is, of EUROPE.

But though a particular number of States may be avowedly within the pale of the same Law; it certainly can hardly fail to happen that there may be others barely *upon the verge of it*; and the complexion of their character, is therefore dark and doubtful. These, *may partake of two laws at the same time*; or they may absolutely be under the control of one, with the rest of the Nations of *their own Class*; while they partially adopt the other, as far as it regards their partial intercourse with the *Nations of another Class*. (c) Such States as

(c) Per imitationem mutuam populorum sine speciali consensu uno tempore facto.—Suarez. Corollary I. cap. 20. l. 1. De leg. ac Deo, &c.

these,

these, are for the most part bordering upon one another ; or if at a distance, connected in some measure by Trade and Navigation ; and such States may be deemed to be *in a kind of Twilight between the two Laws.*

In this situation, the TURKISH EMPIRE seems to have been for some time ; governed no doubt in its intercourse with the Nations of the East and South, by the ferocious maxims of those countries ; but turning, with a manner somewhat softened, to a connection with the States of the Western World. (*d*)

In this situation also formerly, the Russian and Polish Nations continued, before they came to adopt our manners and maxims in all their extent ; and as it was comparatively late before this happened, they have sometimes been called the mere *Primi Barbarorum.*

The Russians took their place in the *European Republic* through the medium of the

(*d*) See a good historical sketch of the connection between the Porte and the European States by Treaty, in *Mably Droit. Public. ch. 5.*

Greek Empire, having embraced Christianity in 989, when their prince Walodimir espoused Anne the Sister of the Emperor Basilius Porphyrogenitus. (*e*) And it is not impossible that their backward state of civilization and fraternity with the European States, might be owing to this, among other causes; the Greek Empire, though much connected from situation, being different in manner, character, and race, from the German Nations. (*f*)

The Prussians were even behind them in rank; and their entry into the Class which obey the European Law, was probably marked by their conversion to the Christian Religion.

So late as the thirteenth century, they are described to have been buried in the most

(*e*) Gibbon. Decl. & Fall. ch. 55. Puffend. Introd. a Phist. Un. 1. 5. ch. 2.

(*f*) It was the opinion of Montesquieu that Religion degenerated in Russia under the *Greek* Emperors, to the low state in which it continued, till Peter the Great renovated the whole nation in Religious, as well as other matters. (Grand. et Decad. Rom. ch. 22.)

pro-

profound depth of ignorance and idolatry. They at first lived promiscuously according to tradition, in woods, having neither manners, nor order, till an old man, named WAYDEWUT taught them by the example of the Bees the necessity for a King. He himself was the first Sovereign, and in extreme old age, offered himself a voluntary sacrifice to the Gods of the Country. The Knights Templars made holy war upon them, and even in the thirteenth century, such was their savageness, that they sacrificed those that fell into their hands, to their Idols.

By that time however the seeds of Christianity were sown among them ; and between the zeal of Missionaries, and the swords of the Knights, they quitted their ignorance and entered into the *rank of the nations of Europe.* (g)

How, or when it is, that a people in this situation may be said with accuracy to quit

(g) Puffend. Introd. à l'hist. un. l. 5. ch. 1.

their own SET, in order to enter into another; and by what modes and gradations it does so, is very difficult to be determined. In general however we may observe, that the steps have been very gradual, and the manner by TREATY.

Thus, the connection between *Europe* and the *Mahometan* States, seems universally to have commenced by Negotiation, and Alliance. In former times, their mutual relations were solely those of Enemies.—They exhausted themselves in war; they made peace, not to acquire friends in one another, but merely to recruit their losses; and that which first recovered, was the first to recommence hostilities. (b) But the weight and impression of the character of CHARLES V. as they were the cause that the System of Europe was first reduced to something like regular principles; so they extended themselves beyond the bounds of European Politics, and were the means of introducing the *Turkish* power into the *Christian* Confederacy.

(b) We shall consider this subject more at large when we come to the influence of *Treaties* upon the European Law of Nations.

It was the more effectually to balance his superiority of consequence, that FRANCIS I. was driven to encounter the religious hatred of many of his fellow Christians, when he submitted (though not the first as has sometimes been supposed) to enter into alliance with the *Infidels* of Constantinople. Long after his time however, the PORTE was so ignorant of the affairs of Europe, that till they became acquainted with the power and energy of ELIZABETH's character, they believed *England* to be a province of *France*; (i) and even then, accorded privileges to the *Dutch*, on the supposition that the Belgic State was a dependency of *England*. (k) For a century and an half afterwards, they were but little known except to their old enemies the *Venetians* and *Austrians*, and were visited by more distant people, as the Chinese or Persians are visited, for the sake of commerce.

It may be supposed therefore that little change was made in their maxims of State, or their law of Nations; and accordingly, the

(i) Birch. Mem. of Eliz. 1. 36.

(k) Mably. Droit. pub. ch. 5.

most flagrant breaches of the Law, will generally be found to have happened in our intercourse with *them*.

The growth however of the power of *Russia* in the present century, and the consequent necessity of supporting the *Ottoman* Interest, will probably be the means of their assimilating more closely with ourselves, than ever; as far at least as their religious prejudices will permit.

By Treaty also, the *Barbary* States have at length been induced to assume a character a little, and but a little, more conformable to *European* maxims. Stipulations are inserted in various articles of Treaties that have been made with them, that public Ministers shall enjoy the protection of the Laws of Nations; and what those Laws are, we are forced actually to explain to them.

We have been the more particular and elaborate, possibly so as to have become prolix, upon this important part of the subject;
I
because

because though the arguments for our System are sufficiently obvious to any one who attends seriously to them ; yet they have not only never till now been collected into one broad point of view, but are actually not often to be collected, except by implication.

No one has yet laid it down in a clear, ample and precise manner that the Laws which are the objects of our enquiry are *not* the Laws of the World ; of course no one has yet examined, how far they obtain with particular Nations ; or how far attention ought to be paid to the circumstance of their obeying another Code.

And here we shall take our leave of the general subject, having demonstrated as far as we are able, the necessity in all speculations concerning the LAW of NATIONS, for confining what we say to some one particular CLASS of them, as they are united together under similar principles of action, and similar casts of thought.

The

The chronological account of the law, as we ourselves have obeyed it in EUROPE ; the strange ideas that were formerly entertained of it, generated by various local and important circumstances ; the gradual changes, (and the causes of them) which took place in those ideas ; together with the last improvements that were given to them, so as to elevate the Law into the rank of the sciences, will be explained at large in the following chapters.

CHAP. VI.

THE HISTORY OF THE LAW OF NATIONS IN EUROPE
AS OBSERVED BY THE GREEKS AND ROMANS.

I SHALL not detain the reader by enquiring what Savages were the first who peopled the forests of EUROPE, or examining the state of the intercourse of wandering Barbarians, who had no political importance, and little political communication. In the earliest history of this remarkable quarter of the Globe, two celebrated and interesting CLASSES of people press forward upon our observation, so far superiour to all others, that they divert us from the rest, and entirely absorb our attention. These are the famous nations of GREECE and ITALY, the laws of whose intercourse once known, we have little occasion, as far as it concerns our subject, to enquire into those of cotemporary States. They led and domineered in the politics of the world; the mightiest Nations bowed down before them, and took their ideas and their tone, from their will or example. They were
equally

equally celebrated in arts, and in arms ; they penetrated the depths of Science ; they analysed the whole mind of Man ; and all that the *unassisted* genius of Humanity could attain to, they made their own in a manner as rapid, as it was almost miraculous.

One thing however was wanting to the perfection which, had they possessed it, they would probably have acquired : and that was, the knowledge of the doctrines of a Religion, which whatever may be its points of controversy, has had the uniform effect, wherever it has taken root, of producing a more equitable notion of things, and a milder system of manners.

Accordingly, from the want of this great advantage, we may observe that the People in question, while they were in the first scale of eminence in almost all other respects, fall far short of their posterity in their ideas of the Law we treat of. The want of a principle sufficiently binding in their schemes of Morality, had a palpable effect upon their characters in private life ; and, as might be expected, it transferred itself into the
spirit

spirit of their Law of Nations. However therefore we may be accustomed to hear of their politeness, their arts, their refinements in elegance, or their knowledge of Laws; we find upon enquiry, that their politeness, while it sharpened their understandings, had no effect upon their hearts; that their refinements were for the most part sensual; and when we come to contemplate the general scope of their Laws of War and Peace, they will be found too often to resemble the Barbarians they despised.

One of the most striking Laws of the *Romans*, is that by which, instead of considering every man as a fellow creature between whom and themselves there was an implied alliance; he was deemed a Being to whom they were absolutely indifferent, and with whom there was hardly more connection than with the brutes of the earth: Inso-much that though, (to use the words of the Law) when there was no treaty of friendship with any particular Nation, it was not on that account considered as an Enemy; yet if any thing mutually fell into the hands of each other, it became lawful prize; so that
even

even if a Citizen of either State came within the territory of the other, he might lawfully be reduced to Slavery, (*a*) and it was therefore one of those cases in which the right of Postliminium had place. (*b*)

The whole genius of their character, and of their very language, was of a similar cast, and the word which signified Stranger, was the same, both among the Greeks and Romans, with that which in its original, denoted an

(*a*) Si cum gente aliqua, neque amicitiam, neque hospitium, neque fœdus amicitiae causa factum habemus; hi hostes quidem non sunt; quod autem ex nostro ad eos pervenit, illorum fit: Et *liber homo noster ab eis captus, servus fit, et eorum*. Idemque est si ab illis ad nos aliquid perveniat. Hoc quoque igitur casu, Postliminium datum est.

Dig. L. 49. Tit. 15. L. 3.

(*b*) The right of Postliminium is that by which any Citizen of one State, taken in War by another, and released from captivity, re-enters the *Threshold* of his Country and succeeds to the enjoyment of every thing which he would have enjoyed, had he never been absent. The genius of this Roman Law therefore considers all Mankind, whom they had not made their Friends *by Treaty*, as a kind of Enemies; who, though they do not openly attack them, are perpetually lying in wait for them at home.

Enemy,

Enemy. (c) Among the former people, every one who did not speak their language was stigmatized with the name of barbarian ;— *βαρβαρος*, meaning literally, one who pronounces a language with an improper accent. This however would not be so remarkable, was it not for the curious rights which they assumed to themselves over these *οι βαρβαροι*, who were so unfortunate or so inferior, as to inhabit other Countries than their own. One of the greatest of their Philosophers, who carried the reach of human intellect as high as it well could go, asserted that Strangers were Slaves by nature ; might be considered as beasts of chase, and fairly hunted down ; and another in conformity with this, gives it as the opinion of his Ancestors, that of all wars, those are most necessary and just, which

(c) *Hostis apud Antiquos, Peregrinus dicebatur.*

Pomp. Festus.

So also Cicero—“ *Hostis enim apud majores nostros is dicebatur, quem nunc Peregrinum dicimus. Inducant duodecim Tabulæ, Aut Status dies cum hoste. Itemque, Adversus Hostem aterna auctoritas.*

De Offic. L. i. Chap. 12.

are

are made by Men against wild beasts ; and next to them, those which are made by the Greeks against Strangers ; “ who,” says he, “ are naturally our Enemies, and for whom “ we are perpetually laying snares.” (*d*)

These opinions may serve to explain several of their transactions which have been deservedly considered as disgraceful to them ; and among the rest, the shameful treatment of the Ambassadors of *Darius*, by the two most renowned of their Republics, which has been thought by some to have been the mere effect of the turbulent spirit of the Athenian Democracy and a direct violation of the Law of Nations. (*e*) Possibly however, it was not so much an infraction of Law, as a compliance with the prejudices above mentioned, which taught them another sort of system to be observed towards Strangers. (*f*)

In

(*d*) Aristot. Polit. L. I. C. 8. & Isocrat. Orat. Panathen. See Grotius' Remarks. D. J. B. & P. 2. 20. 40. 3.

(*e*) Rollin. Hist. Anc.

(*f*) It is remarkable that XERXES, Barbarian as he was, shewed he understood the Laws of humanity better than the Spartans themselves. That people conceiving themselves under the indignation of Talthybius for their treatment of a
Character

In the earlier ages of their history, the profession of Piracy was so far from being held dishonourable, that it was publicly avowed; and so late as the time of TARQUIN at Rome; above four hundred years after the age of Lycurgus, and cotemporary with Solon and Pisistratus, (when the Athenians are said to have had both Tragedy and Comedy among them, and Greece might therefore be thought to have assumed a more civilized form;) the *Phoceans*, on account of the sterility of their soil were forced to exercise Piracy, a profession which according to the historian was *in those times held honourable.* (g)

But whatever might be their opinions respecting the rights of Strangers, their customs with respect to one another were hardly less

Character so sacred as that of an Ambassador; delivered up two of their Citizens as an expiatory Sacrifice to the Successor of the Persian Monarch; who, out of magnanimity, says Herodus, declined following the bad example of the Spartans.—Herod. L. 7. C. 136.

(g) Plerumque etiam latrocinio maris, quod illis temporibus, (Tarquini Regis) *gloriæ habebatur*, vitam tolerabant.—Just. Hist. L. 43. C. 3. N. 5.

ferocious. The cruelty of their Laws of War is well known; and instances of it might be multiplied upon one another, which would fill the more humane European of modern times with horror. The Slaughter of Prisoners in cold blood; the execution of Generals after unfortunate warfare; (a humbled State which commands the lenity and compassion of Christian Enemies;) the hardships of perpetual Slavery; the absolute annihilation of Cities; the wanton punishment of Hostages; the bloody personal revenge often taken upon Enemies, only for having performed their duty well;—these are the points most eminent in the history of their public intercourse together.

Examples of this, have already often been selected by others; nor is it necessary for those acquainted with the Grecian story to enumerate them. It will not however be improper to bring to their recollection, the strange inconsistency of character in the Athenians, who were reckoned the most polished people of Greece, which marked them in the course of their wars. When about to attack *Scione*, *Melos*, and *Mytelene*, they *pass a*
vote

vote to destroy all the inhabitants of the former place who were above the age of puberty ; in the two latter, all, without exception.

During the course of the Peloponnesian war, the Spartans and Corinthians having sent an Embassy through Thrace into Persia ; the son of the Thracian King was prevailed upon to seize the Ambassadors and deliver them to the Athenians. These unfortunate men, cloathed with a character universally and uniformly held sacred, by the most ignorant Nations, were put to death without trial, *by a Decree* of a People esteemed the most enlightened of their time. (*b*)

It is wonderful to observe such a people in the same war, calmly voting in full assembly those acts of inhumanity which so much disgrace them. Had they been committed in hot blood, or with arms in their hands, much might be said for them ; but in general, when a place which had stood a siege, was unhappy enough to be reduced to surrender ;

(*b*) Thucyd. L. 2. C. 67.

the ferocious populace were formally summoned, in Athens itself, to dispose of their Captives; and the unhappy men commonly became victims to the avowed maxims of their Law.

In this manner it was that the Æginetans, brought in captivity from Thyraea in Laconia to Athens, were all of them executed in cool blood. Nor, as might be expected, did they here, or in a variety of other instances, do any thing not warranted by the example of their enemies. The Spartans at the surrender of *Plataea*, pursued the same bloody maxims, and revenged themselves after the battle of Ægos Potamos, by executions equally as barbarous and unjustifiable, as those ordered by their inhuman rivals. Through the whole progress of the war indeed, the same spirit is to be discovered; and wherever the Merchant Ships of Enemies or even neutral Powers were met with, the usual mode was to put the crews to death.

Slavery was universally allowed among them, and a more disgusting picture than that which it presents to us, is scarcely to be met with.

The

The circumstances indeed which attended the *Lacedæmonian* Slavery, are shocking beyond conception ; nor of all the examples of cruelty and wickedness, which stain and disgrace the annals of mankind, can any thing be found more horrid, or more revolting to nature than the *Κρυπτικὰ*, or secret Law of the Spartans. By this, when the Helotæ or Slaves, became so numerous as to give umbrage to their Masters, it was allowable to thin them by death, and that in a manner the most miserable, on account of the apprehension of it in which they must always have lived. Some of the ablest of the young Men were dispatched privately into the country, armed with daggers and taking with them a little necessary provision. These, in the day time, hid themselves in the Thickets and Clefts, and in the night issued out into the highways, and murdered all the Helots they could light upon. Sometimes however they set upon them in the day, while at work in the fields, and thus in the very act of procuring provision for their Masters. (i)

(i) Potter's Antiq. 1. 619.

Such barbarous actions however, though they may give a shock to our compassion, do not move our wonder or indignation, so much as those deliberate violations of reasonable and natural justice, which we might have expected any where but in that country which, from the number and eminence of its philosophers, ought to have been nicely accurate in it's maxims concerning right. "It appears," says a modern author, who has ably delineated their policy and history, "to have been very generally held among the Greeks of that age, that Men were bound by no duties to each other *without some express Compact.*" The property of Foreigners might be any where seized, and themselves condemned to slavery, or even put to death without any breach of human Law; and so far from any breach of divine Law, that prayers were addressed to the Gods for favour and assistance in the commission of such violences.

Those connected with them by social compact they described by a term peculiar to themselves, ENSPONDI; meaning originally, persons with whom they had poured wine to the Gods, as a proof of their Compact. Those
who

who had forfeited their claim to the benefit of this sort of alliance, were called ECSPONDI, that is, *Out of Compact*, or Out-laws. Upon the surrender of Platœa to the Spartans, the Commissioners of the latter determined that their prisoners were ECSPONDI; they were asked one by one, whether in the present war they had done service to the Lacedæmonians; and answering in the negative, they were severally led aside and put to death to the number of two hundred Platœans and twenty-five Athenians. (*k*)

We may here observe a remarkable similarity between this mode of proceeding and that of the Commissioners of the French Convention, towards those of their own Nation taken in war, whom they condemn (and in this they are not inconsistent) as guilty of Treason. In such transactions therefore, the Greek Law of Nations considered the Subjects of one State in open hostility with another, in the same point of view, as modern Nations consider those that are guilty of *Treason*;

(*k*) Mitford's Hist. of Greece, C. 15. S. 7.

which, as there was no allegiance due, was the summit of Injustice.

So much then for the Greek Law of Nations; we will now turn to the Romans, who, it must be confessed, present to us a picture somewhat more regular.

Many of their Institutions, as well as many facts of their History, prove to us that they went far beyond their rivals, in this Science. Nor can it be said that they improved upon the Grecian Law, so much as that they had an original one of their own, superior to the other in regularity and equity.

So early as in the hundred and fourteenth year of their State, when ANCUS MARTIUS is said to have begun his reign; a Ceremony was instituted among them which would do honour to the wisest and most polished of the modern Nations; I mean their famous mode of declaring War. That Prince is described by Livy as of a genius between that of Romulus, and Numa; and as the latter softened the rugged minds of his new People by the Ceremonies of Religion; So Martius wished to temper their Valour with Justice, by the insti-

institution of Ceremonies in War. Whenever therefore the State had cause of complaint against another, a Herald, called the PATER PATRATUS, or Chief of the College of Heralds, was first sent to the frontiers of the offending Nation to demand redress; and if within thirty-three days, justice was not done, then, and not till then, they were to be considered as Enemies and pursued with fire and sword. Notice of this even was, after all, to be given, by the return of the same Herald to the Frontiers and casting a Javelin into the hostile Territory. (1)

So much generosity in an infant and precarious Nation, promised many interesting and magnanimous actions in the course of their History afterwards; and accordingly, without meaning to go into the comparison of their examples of patriotism with those of Greece, we shall not be far wrong in saying that they exhibit much greater instances of regular Law, in their intercourse with foreign Nations. These are for the most part so well known, that it would be unnecessary as well as tedious to dwell on them; many of them how-

(1) Tit. Liv. L. 1. C. 32.

ever ought on this occasion to be set forth, as it proves them to have had very strong and superiour ideas, of the duties which Nations owe to one another. Some of them indeed will for ever form the basis of many modern questions; As the transaction of *POSTHUMUS* with the *SAMNITES*, the celebrated epoch of the *CAUDINE FORKS*. The disavowal of this General's conduct by the Senate; their offer to send him back; the refusal of the Samnites, and the consequent arguments on both sides, (*m*) furnish the matter for the very interesting and important part of modern Jurisprudence, called the *SPONSIO*, about which there are still various opinions. (*n*)

Their notions also of military Law, in regard to foreigners, went in some respects as far as our modern refinements. There are, says Cicero, certain duties to be complied with even towards those who have injured you; and in punishing, and avenging, there is a particular mode to be observed, which gives rise to the Laws of War. (*o*)

(*m*) Vid. Cicero. de Offic. L. I. C. II.

(*n*) See Vattel. 2. 14. 209.

(*o*) Cicero. de Offic. L. I. C. II.

Amongst

Amongst these Laws it seemed to be laid down, that no Roman could fight even for his Country without a Commission; which in all respects is similar to the modern notions, that those who so fight may be punished as Robbers (*p*)

In compliance with this therefore, when the younger *Cato* was dismissed by *Pompilius* from his Province, with the rest of the Officers of his Legion, and wished to remain behind for the rest of the Campaign; his Father wrote to *Pompilius*, desiring him to administer the military Oath to his Son, *de novo*; as the Legion in which he had served was no longer under his command.

The letter also to his Son, lays it down that it was contrary to Law for one *not a Soldier* to fight with an Enemy. (*q*)

The spirit of the rest of their Laws of War, was generally of the same regular cast; we ought not, says CAMILLUS, (at a time when

(*p*) Vattel. D. des G. L. 3. S. 226.

(*q*) Negat enim jus esse, qui miles non sit, pugnare cum hoste.—Ib.

their civilization was comparatively backward) to aspire so much at victory, as to endeavour to avoid the infamy of obtaining it by base means; (r) and one of their earliest maxims was, that they should wage war with not more valour than justice. (s)

It was a compliance with these principles that gave birth to many of their most virtuous, if not their most brilliant actions: that *Clelia* was sent back to *Porfenna*; that *Regulus* returned to *Carthage*; and those who treated of an exchange of prisoners after the battle of *Cannæ*, to *Hannibal*; that *Fabricius* refused to assassinate *Pyrrhus*; and *Camillus*, to receive the children of the *Falisci*.

A sense also of the necessity of enforcing such doctrine upon others, produced from them many severities toward foreign Nations; and the utter destruction of one of the noblest Cities of GREECE was professedly the consequence of her having infringed the rights of Ambassadors.

(r) Plutarch. Vit. Camill.

(s) Justique ea, non minus quam forte didicimus genere. — Liv. L. 5. C. 27.

These rights themselves formed one of the most remarkable features of their Law, and are deservedly celebrated as being better understood by them than by any of the antient Nations. Indeed the very existence among them of a *College of Herald*s, to preside over and expound rules, expressly drawn up for their conduct toward foreigners, bespeaks them a People far advanced in the Law of Nations considered as a science.

With all their superiority however, they gave into the rugged notions which the want of a milder religion, and consequently a more equitable system of morality, made them imagine nothing more than just; and though they possessed magnanimity beyond most others, yet they were generally cruel, and in many respects ungenerous.

Of this, the whole plan and scheme of their TRIUMPHS are an example. To depress an enemy in his spirit and pride of mind, (the only consolation he has left, when his strength and his power are annihilated;) To debase and mock his condition because we fear it no longer; To exhibit him to a gazing, ferocious,

cious, and sometimes, despicable multitude ; an example of the uncertainty of fate, or perhaps (what is infinitely worse for his own feelings) of misconduct, and personal imbecility ; is surely to add insult to injury, and to sharpen unnecessarily the stings of misfortune. Yet to do this, was the highest ambition, and almost the highest reward of a Roman General. The captives of his arm were led a miserable instance of fallen grandeur, behind his Chariot Wheels ; and the higher their rank, their power, or their character, the greater the triumph of their inexorable Conqueror. Death itself by the Executioner in prison, was even sometimes the closing scene of this inhuman spectacle ; a punishment which after such humiliations, was rendered surely less than ever necessary, either as a matter of policy, or revenge. (t)

The

(t) The following animated passage from the Speech of Vibius Virius against the Romans, will sufficiently prove to us the savage inhumanity of their proceedings towards prisoners. “Cruciatus contumeliasque quas sperat hostis, dum liber, dum mei potens sum, effugere morte, præterquam honesta, etiam leni, possum. Non videbo APP. CLAUDIUM & Q. FULVIUM *victoria insolenti subnixos* ; neque vinctus per Urbem Romam, triumphi spectaculum
“ trahar,

The utmost ravage and bloodiest conduct in open and doubtful war, is perhaps more supportable than such a system. (u)

Nor were they less free from reproach, when sharpness of mind, rather than strength of arm, was necessary for their interest; when, for example they came to negotiate, to make, and to interpret Treaties. They here exhibit instances of chicanery, any thing but consistent with that magnanimity and force of soul, which were peculiar to them on other occasions. Of this, nearly the whole of the third Punic War, particularly their last

“trahar, ut deinde in carcere, aut ad palum deligatus,
“lacerato virgis tergo, cervicem securi Romanæ Subjiciam.

Liv. L. 26. C. 13.

(u) See PLUTARCH's account of the Triumph of Paulus Æmilius. After the greatest display of acquired riches, there came, says he, the king's Children led captives, and with them a train of Nurses, Masters, and Governors, who all wept and stretched forth their hands to the Spectators, and taught the little infants to beg, and intreat their compassion. After these came Perseus himself, clad all in black. He looked like one altogether astonished and deprived of reason through the greatness of his misfortunes.

Plut. in Vit. P. Æmil.

Perseus afterwards destroyed himself in prison.

transaction with Carthage ; and the quibble of QUINT. FABIVS LABEO, to destroy the Fleet of Antiochus, are memorable examples. (v)

The whole course of their history indeed, marks them a people determined to pursue their own great object, of dominion, by every mode, generous or subtile. They were as crooked in the cabinet, as they were energetic in the field ; and the conduct of the Senate for ages together, has been celebrated as a masterpiece in politics, in a sense even *Machiavellian*.

I do not mean to say that the instances which may be selected from their history, of bad faith, and improper interference in the affairs of other Nations ; of open violation of the rights of neutral powers ; and of public plunder and robbery which every where characterize them, (w) were not often blamed

(v) Antiochus being defeated by that General, agreed to give up to him one half of his Fleet. The manner in which the Roman executed the Treaty, was by cutting every Galley in halves, and thus depriving him of the whole.

Valer Max. L. 7. C. 3.

(w) See the Comments of Montesquieu upon these parts of their History.—Grand and Decadence des Rom.

by

by their own writers, or may not be equalled by the conduct of very modern and enlightened Nations. But in the latter case, whatever may be the effect of *power* in commanding submission, it is always well known when the Law of Nations is broken; cotemporary States are appealed to, and the cause is tried, in argument at least, by known principles and settled rules. Of this mode of proceeding the Antients, either knew nothing, or did not make use of it; which warrants a fair inference, that what was thus done, was not considered as an infraction of law. It is the more warrantable, because of all the nations of the world, none ever paid a more religious, or indeed superstitious deference, than the Romans, to the force of promises and oaths; a point of their character which stands foremost in the numerous and able critical disquisitions, to which the actions of this wonderful people have so often given birth.

But whatever was their inhumanity, or the bad faith of their government towards foreign princes, in their progress to dominion; their conduct towards the bulk of the people they conquered, was for the most part exemplary,

and far different from that which we have noticed of the Grecians. To civilize by conquest; to melt down and incorporate the subdued Nations with their own, and derive assistance from them, as from their fellow Citizens, in future attempts against others; was a great part of their policy. But to act thus, was directly contrary to that revengeful and bloody spirit which distinguished the Grecian Politics. And accordingly we find, that after having punished, or got rid of the CHIEFS of the Nations they subdued, the people for the most part were left in the enjoyment of their religion and customs, much of their property, and often of their very Government itself. (x)

(x) I am aware of many instances of severity towards prisoners, which may seem to militate against this position; particularly that of the Tuetonic women, who, upon the defeat of their husbands by Marius, sent a deputation to that General, to stipulate for the security of their chastity and freedom, but were refused, and voluntarily inflicted death upon themselves and children.—Flor. L. 3. C. 3.—But it must be remembered that this related only to an Army which had just fought, not to a People conquered. These Tuetones had no Country; they were in quest of one; and there was therefore no reason of policy, why they should not comply with the maxims of the time, which, with respect to the slavery of prisoners, were the same among the Romans as among the Greeks.

This

This principle of action, possibly took its rise from the accidental conduct which they were obliged to pursue on the first foundation of their State. A handful of people brought together on the hazard; without connection, almost without territory, and absolutely without wives; could not pursue those inexorable maxims which regular and long established States fell into. At least they could not expect to be rapid in their augmentation, except by the very mode which the policy of Romulus dictated; and once begun, they might continue it from habit alone, if not convinced by experience of its superior benefit.

This however has been differently accounted for by a writer of research and learning of the present time.

In considering the various effects upon the Law of Nations which are produced by different modes of life, Dr. *Falconer* refers this variation between the Greek and Roman Law, to the manner of living in the two Countries. In the *Savage* and the *Shepherd* States, says he, much land is necessary for the maintenance of the people; and when one

People is conquered by another, the desire of encreasing their quantity of food by the accession of their territory, makes the Conquerors thin the Inhabitants by military execution. On the other hand, where agriculture prevails, as much less land is necessary, there is no reason why the prisoners should not enjoy their lives, when there is enough for their support. It was not then extraordinary, that the Romans whose agriculture could maintain additional numbers, should receive their prisoners into their Society; while the Greeks who in several respects were in a situation similar to the people formerly described, (*those in a savage and shepherd State*) fell naturally into more ferocious maxims.

He goes on to prove this latter position, by the number of Colonies which Greece so often sent forth; a sure mark that there was not enough for their maintenance at home. (y)

Now I own this reasoning appears by no means so strong as to produce conviction. For

(y) Falconer on Climate, B. 6. C. 3.

in the first place, *Commerce* as well as *Agriculture* will produce food, if not in as great a degree in very rich soils, yet in a much greater one, in soils comparatively barren, and if the ROMANS were Husbandmen, they despised commerce. The GREEKS (particularly the ATHENIANS and CORINTHIANS) not only did not despise *agriculture*, but rose to great eminence in *commerce*. Many of their ancestors came from PHÆNICIA and from EGYPT; and the commercial spirit of the one, and the agricultural spirit of the other, would in their new settlements find ample room for the exercise of both. For while the great length of their Coast, their numerous Harbours, and the multitude of Rivers, with which their whole Country was intersected, held out the greatest incitements to Trade; the fertility of a number of their provinces, equally incited them to a vigorous cultivation.

The face of the country has been accurately delineated by their own writers, and their accounts have been well collated by modern critics—and though ARCADIA, DORIS, ÆTOLIA, and ATTICA, are described as extremely

mountainous ; yet the latter is said to have been fertile in Olives and Figs ; and the vales of THESSALY, BÆOTIA, LOCRI and PHOCIS, and particularly ARGOS and MESSENIÀ, were fruitful in corn to a degree of celebrity.

With respect to the colonies sent out by the GRECIANS, the argument, does not perhaps apply so much to them as to the ROMANS themselves, whose colonies were a well known political instrument for subjugating foreign Nations, and extended far and wide.

But the reason against this opinion which, it should seem, ought naturally to have most weight, is drawn from the high state of perfection to which the Greeks attained in all the refinements of Art and Science ; and which even, while they were forced to crouch under the sword of their rivals, rendered them still superiour not only to their conquerors, but to all the world.

Such refinement however is totally inconsistent with the savage, or shepherd states ; for men do not commonly attain, even to a moderate degree of merit in the Arts, till leisure
I has

has been afforded for the division of professions and of labour, by the ease and certainty by which subsistence may be acquired.

We pretend not however to account, farther than we have done, for this marked difference between the Greek and Roman Law of Nations;—contenting ourselves with observing the fact, as a strong corroborative proof of our point, that the Law in question, is only that which obtains among a particular *Class* or number of States. The Towns of Italy and of Greece lie nearly in the same latitudes: between Brundisium and the Acro Ceraunian Promontory, there is not more than one degree of longitude; and between Rome and the Ionian Nations, (nearly the extreme points of the two Classes of People) not quite sixteen degrees; the ages of their Republics were almost the same; the time at least when the Roman maxims were most inculcated, and the improved state of Greece, were absolutely cotemporary, (z) and

(z) There were not forty years between Alcibiades and Camillus.

in their religion any essential variation is not easily discovered; yet so marked, and so deep is the line of difference, which we find in their Laws of Nations.

Such then was the character of the Law among these two remarkable SETS of PEOPLE, till the one was incorporated with the other by conquest, and both together yielded at last to a destiny, which for a long time covered the whole European World with misery, and darkness.

CHAP. VII.

THE PRINCIPLE OF THE SCANDINAVIAN LAW OF
NATIONS.

IN that unfortunate period, when the populous North poured forth her multitudes to overwhelm the far famed Mistrefs of the World ; when every thing that was elegant, and every thing that was wise, gave way to the rugged ignorance and destructive fury of our Scythian Ancestors ; the Laws of all kinds as well as the discipline of the Romans, were loft amid the general uproar. The Scandinavian fwarms, confumed, or fwep off, every thing that came in contact with them ; the old Nations melted away ; no veltige of former civilization was left, and the little humanity or order that had been cultivated, fled from before a people who defpised, or never had been acquainted with them. A new *Set of Nations* therefore got poffeffion of the World ; and a change in notions and manners ; a different language, and a different Religion, were introduced.

Thefe

These new Masters of EUROPE were of the most rugged cast ; they delighted wholly in blood ; war was their pastime, and slaughter their feast ; and these manners, generated perhaps at first by the climate, were confirmed by their Religion. (*a*)

The present Nations of Europe are said to spring from two classes of people ; the CELTIC and the SARMATIAN ; in their race very different, and in their religious notions by no means the same. The first gave origin to the Gauls and Britons ; the last to the Scandinavians or Goths. The former of these, as is well known, were taught certain mysteries by the DRUIDS which are now impenetrable from the loss of the documents that contained them ; (*b*) the latter were ab-

(*a*) See a full account of their Character and Institutions in Cæsar and Tacitus ; Pelloutier. Hist. des Celtes. Mallet's North. Antiquities. Temple on Heroic Virtue. Bartolin. de caus. contempt. Mort. Gibbon's Account of the Scythians ; Decl. and Fall. ch. 26. and the elaborate Notes of Robertson. Introduc. to ch. 5.

(*b*) The British Druids taught their mysteries in verses which their followers were sometimes twenty years in learning. Cæsar De Bell. Gall. C. 13. These are entirely lost.

solute

folute Polytheists, which may be gathered from various monuments that remain. (c) In those points however which could at all influence their public characters, or the system on which they proceeded towards other nations, there was a terrible similitude between them. Both of them believed in the immortality of the soul, taught to the one by the Druids ; to the other by ZAMOLXIS ; and both endeavoured to deserve Elysium in a manner equally horrid to themselves and dangerous to their neighbours ; since they concurred in imagining that violent death was the only passage to Paradise.

It is wonderful under this influence, to what a height they carried their contempt of life ; insomuch that death, and that, in its most violent form, seemed to be an object of their courtship, and he who died of old age was covered with infamy. To die with his arms in his hands, was the vow of every

(c) They are very authentic, and were brought together into two collections called the Edda, by SÆMUND SIG-FUSSON, born in 1057, and SNORRO, Judge of Iceland, in 1215. (See the North. Antiq. 2. 21, 22. Pref.)

free man, and the pleasing idea they had of this kind of death, led them naturally to dread the thought of perishing by disease or old age. Hence in their legends and poems, the warriors as they fell in the field, are reported to die singing or laughing; (*d*) and hence when by accident, (which more polished men would call lucky, but which they deemed a misfortune,) any of them advanced in safety to years, in spite of the perils of war, the custom was to destroy themselves, either by their own hands, or by being carried into a field of battle, or by having recourse to the kindness of their friends to perform this acceptable service for them. (*e*)

Sometimes

(*d*) King REGNER, who died singing the pleasure of death in a field of battle, cries out at the end of a Stanza, "The hours of my life are passed away, I shall die *laughing*." The conclusion of the Eulogy of a king of Norway is, "Hereafter it shall be recorded in history that king HALFER died *laughing*;" and in praise of a man who died in single combat, as recorded by Saxo Grammaticus, it is said that he fell, *laughed*, and died.—North. Antiq. i. 207.

(*e*) Northern Antiquities, i. 200.

There are in the same book, several curious instances of this contempt of the pains of death. A young warrior of Jomsbourg,

Sometimes they threw themselves down precipices into the Sea ; and in Sir William Temple's time, there was still in Sweden a place called ODIN'S HALL, the name of which was preserved as a memorial of this ferocious custom. It was a great bay in the Sea, encompassed with steep and rugged rocks ; and they hoped by the boldness of such a violent death, to renew their pretence to an admission into the hall of their founder and supreme God, which they had lost by failing to die in combat, and with their arms. (*f*)

Jomsbourg, in Pomerania, having been made prisoner, and led to execution after the custom of the time, begged that he might not be led to punishment like a sheep
 “ Strike the blow said he to his executioner in my face, I
 “ will sit still without shrinking, and take notice whether
 “ I once wink my eyes, or betray one sign of fear in my
 “ countenance.”

Another warrior having been thrown upon his back in wrestling with an enemy, and the conqueror being without arms to dispatch him, the vanquished man promised to wait quietly in that posture, till the other went for a sword to kill him, and he faithfully kept his word. Id. i. 205, 207.

(*f*) It was related to Temple, by Count Oxenstern, the first of the Swedish Ambassadors at Nimeguen. See Temple's Miscellanea, Part 2. Ess. 3. on Heroic Virtue, and North. Antiq. i. 210.

There

There was however this difference between the notions of paradise among the two people; that the CELTS imagined those who died of natural deaths, were merely *deprived* of happiness; while the SCANDINAVIANS *punished* them “in caves under ground, all dark and miry, full of noisome creatures, of stench and misery. (g) The enjoyments of the one were also more mild than the other; the CELTS passing to what they called FLATH INNIS, or the Noble Island, which is described as green and flourishing: (h) The Goths to the palace of ODIN, who to use Sir William Temple’s expressions, eternally kept open house for all such Guests, where they were entertained at infinite tables, in perpetual feasts and mirth, carousing, every man, in bowls made of the skulls of enemies. (i) The modes of worship among both races were however, horrible to the last degree. The Druids sacrificed prisoners of war by hundreds, by placing them in gigantic idols made of wicker, and burning

(g) Temple on Heroic virtue.

(h) Macpherson’s Introd. to Hist. of G. Britain.

(i) Temple on Heroic Virtue.

them

them to ashes. The Inhabitants of *Coerland* are said to have been a cruel race, whom all others avoided, “propter nimium Idolatriæ cultum;” (*k*) and those of *Estland* to have been worshippers of Dragons and Birds of prey, to whom they offered up living men, bought of the merchants, and were particularly nice in chusing out those of peculiar beauty. (*l*)

Hence then it appears that it was a point of their very *Religion*, to become familiar with slaughter; and it was not merely their disposition, but their bounden duty, to spread about them far and wide, what Christianity teaches us to consider as the most afflicting of evils. The Heroes, says the Edda, have every day the pleasure of arming themselves and cutting one another in pieces, but as soon as the hour of repast approaches, they return on horseback, all safe and sound. (*m*) In this frightful Mythology also, their God ODIN,

(*k*) Adam. Brém. de situ Dan. 12.

(*l*) Nam et ipsi Deum christianorum prorsus ignorant. Dracones adorant cum volucris, quibus etiam vivos litant homines, quos a mercatoribus emunt; diligenter omnino probatos ne maculam in corpore habeant, pro qua refutari dicuntur a draconibus. Id. 13.

(*m*) North. Antiq. i. 120.

is called "The terrible and severe God; the
" father of slaughter; the God that carrieth
" desolation and fire; the active and roaring
" Deity; he who giveth victory, and re-
" viveth courage in the conflict; who nameth
" those that are to be slain." (n)

It will be not less agreeable than curious to observe, as we shall do in the course of this work, how the horrors of these customs came to be lost, amid the altered manners of Europe; and how the very language of nations when they spoke to one another in their Treaties and public Instruments, was expressive of a spirit the most mild and the most opposite to what has been recorded.

Upon the whole then it follows plainly, that with such maxims and morals, not only the municipal customs, such as they might be, but the Law of Nations of the Northern people, must have been far different from that comparatively regular one of the Romans, of which we have been recounting the particulars. Their rules of Right, indeed,

(n) North. Antiq. 1. 86, 87.

far from checking their dreadful and murderous inclinations, were themselves so warped and adapted to them, that they gave them fresh force. They looked upon war, says M. Mallet, as a real act of justice, and esteemed strength as an incontestible title over the weak ; as a visible mark that God had intended to subject them to the strong. They had no doubt but that it was the will of the divinity to establish the same kind of dependance in this respect, as among other animals ; and setting out from the principle of the *inequality* of mankind, as modern Civilians proceed from the principle of their *equality* ; they inferred that men had no right to what they could not defend, and this maxim therefore formed the basis of their law of nations. (o) Accordingly, they made open war upon all the order and regularity that were known ; and within a very few years after the first eruption of this bloody race, a complete revolution in Law, as well as in every thing else, took place throughout Europe. The Roman people, language, and

(o) North. Antiq. i. 200.

manners, past wholly away ; and with them past away the Roman Law.

From this time therefore we must begin as it were anew ; and considering the world again in its infancy, or if you will, in a savage *state* of *Nature* ; we must watch its progress once more from ferocity to civilization ; until from the most lawless habits, we perceive it, under the influence of a milder *Religion*, together with various local circumstances, advancing in this part of Jurisprudence, to comparative perfection.

CHAP. VIII.

THE HISTORY OF THE LAW OF NATIONS IN EUROPE,
FROM THE FALL OF THE ROMAN EMPIRE TO THE
ELEVENTH CENTURY.

THE peaceful and well protected Inhabitant of a modern *European* State, will shudder at the picture which is now about to be set before him. More particularly the happy native of Britain, will have reason to rejoice that he lives in different times, and from the fortunate situation of his soil, removed from such horrors of war, as we are about to record, should the world be so unfortunate as to see them revive. The Law which we are now going to contemplate is nothing but a chain of the most cruel maxims; and as all idea of principles or science, seems to have been banished, or rather never to have been entertained; to shew what were the precedents which the Law supplied, will be merely to recount a series of bloody and savage customs.

THEODOSIUS may be said to have been the last of the Emperors, who swayed the Roman Sceptre in its full power and lustre. The division of his mighty domain into two Empires under his immediate Successors ; if it was not the cause, was at least the signal for that torrent of Barbarians to burst from their mounds which broke down the whole force of the Roman power, and separated the world into new States. (a)

In the very beginning of the reign of ARCADIVS and HONORIUS, we find the repeated attempts of the Barbarians growing effectual ; and long before the middle of the fifth century, we may observe the foundation of the modern kingdoms of Europe, among the provinces desolated by the different tribes of *Goths, Vandals, Burgundians, and Franks.*

Eighty years sufficed to destroy even the name of the Western Empire, and to reduce the remnant of its power to the mere king-

(a) — Scanzianorum in reliquas mundi partes expeditiones, et quasi inundationes, &c.—And. Bur. Suec. Descrip. 2.

dom of Italy, under an Herulian Chief. (b) A century more brought down upon these devoted people; the *Huns*, the *Avars*, and the *Saxons*, in order to complete the ruin which others had begun.

The laws of war of these terrible Conquerors, may be known by their effects. The Romans were not merely subdued, but annihilated: their Cities did not simply pass from old, to new Masters; but they were absolutely reduced to a confused heap of ruins. The slight sketch already given of the religion and manners of many of the parent nations, may in some measure account for these bloody maxims; and it must be owned that the descendants of ODIN were not unworthy their inexorable ancestor.

Whether from the principles of such a Religion; the hatred they bore their Enemies; their love of booty; or the mere savageness of their dispositions; their course was every where marked with a deluge of blood; and

(b) ODOACER was the first *King* of Italy, in the Year 476.

extermination seemed so entirely their object, that they have been not improperly likened to wild Boars. (c) Gibbon compares the *Huns* of Attila, to the Moguls and Tartars, in their most savage state; and if the comparison be just, miserable indeed must have been the situation of mankind. Among the latter, the abuse of the rights of war was exercised with a regular form of discipline: Whenever a City was reduced to surrender at discretion, the Inhabitants were assembled in some adjacent plain, and a division was made of them into three parts. The soldiers and young men were either enlisted among their Conquerors, or massacred on the spot: the young women were reserved for other purposes; and the old and infirm alone were allowed to live, paying a tax. (d)

This was the conduct, when no extraordinary rigour was shewn; but the most casual provocation; the slightest motive of caprice or convenience, involved the whole in an indiscriminate slaughter; and to use their own expression, "Horses might run without

(c) Partim naturam populi suetam prælio, et fugientem diffidia, *instar aprum*.—And. Bur. Suec. des. 2.

(d) Vie de Gengiscan par La Croix passim.

stumbling, where houses and cities had once stood. (*e*) In conformity with these manners, we find their history, a history of blood. Above four millions of persons were said to have been slaughtered by TAMERLANE; ATTILA is esteemed his counterpart, and may therefore be held to have deserved the horrible appellation of the Scourge of God, which this Scythian Savage was pleased to assume among his other titles. (*f*) But exclusive of the victims which fell before him; the waste made by the Barbarians was computed to amount to more than six millions of souls, during the thirty-two years alone which JUSTINIAN reigned; and instances might be multiplied upon instances, to shew that the cruelty of the detail was equal to, if it did not surpass the horrors which the

(*e*) Gibbon. Dec. & Fall. ch. 34.

(*f*) Attila is thus described by the author of the *Respublica et Status Hungariæ*, p. 102. “*Omniaque Cædibus atque incendiis miscens, tantum sui terrorem excitavit, ut vel ad nomen ejus, non aliter quam furie cujusdam orco progressæ omnes Nationes contremiscerent.*” We may indeed judge of the slaughter of these wars, when 180,000 men are said to have perished on Attila’s side alone, at the single battle of Tolosa.—Id. p. 103.

gross sum must imp'y. In the Siege of *Topirus*, the Sclavonians massacred fifteen thousand male prisoners; others of their captives were impaled alive; or suspended between four posts, and beaten with clubs till they expired; or enclosed in buildings and left to perish by fire.—The *Thuringians*, after their defeat by *ÆLIUS* in the plains of *Chalons*, murdered their hostages as well as captives, and put to death two hundred young Maidens, by tearing them asunder by wild horses, or crushing their limbs under rolling waggons: The *Avars*, after offering their captives to *MAURICE* at a low price, and being refused, deliberately cut their throats as useless merchandise. (g)

Such horrors gave rise to Fables that were less unnatural than they may appear to the enlightened minds of modern enquirers. The Witches of *SCYTHIA*, who for their foul and deadly practices had been driven from society, were said to have copulated in the desert with infernal Spirits; and the *HUNS* were the offspring of this execrable

(g) See Gibbon Dec & Fall. chs. 35. 42.

conjunction. The LANGOBARDS were supposed to have Heads like those of Dogs, and to resemble those fierce animals, not only in slaughtering, but in drinking the blood of, their enemies, (*b*) Whatever the belief was, the effect of their rage was confessedly terrible; infomuch that the finest and best peopled Provinces were rendered naked and barren; and Africa, which on account of its beauty and fertility, had been called by a writer of the middle ages "*Speciositas totius terræ florentis,*" (*i*) was reduced to a state so dreadfully like that of a desert, that according to the Historians, one might travel several days in it without meeting a man.

Nations that could make war thus terribly, would never be delicate in their selection of

(*b*) This is Jornandes' story. Others, according to the Author of the *Respublica et Status Hungariæ*, derive them from the more classic origin of Fawns and Satyrs; others again from MAGOG the Son of JAPHET.—*Resp. et Stat. Hung.* p. 36.

Many of the Inhabitants of the Baltic Islands were supposed to have heads like dogs, and all males brought forth by the Amazons, were imagined invariably to be of this form.—*Adam. Brem. de situ Dan.* 15.

(*i*) Victor.

a cause. It would be even doing them injustice to suppose that they stood in need of any : The SCANDINAVIAN and GERMAN People, the Parents of all the rest, were little accustomed to wait the slow returns of labour for subsistence, when they might acquire it by the sword ? nor would they condescend to raise that by the sweat of their brow, which they could more easily obtain by wounds and blood. (*k*) It was usual therefore among them on the approach of the Spring, to assemble and deliberate into what quarter they should carry the war, as a thing of course. The hope of booty generally determined it ; and it was only to be avoided by the payment of a tribute under the name of a present. Even before these tributes came to be regular, the withholding the presents of mere ceremony, gave rise to very cruel invasions. That under so firm a soldier as VALENTINIAN, by the Alemanni, arose from the indignity of their Chiefs at the parsimony of a Roman Minister, who had lessened the value of the present they

(*k*) Nec arare terram aut expectare annum tam facile persuaseris, quam vocare hostes et vulnera mereri : pigrum quinimo et iners videtur, sudore acquirere quod possis sanguine parare.—Tacit. de Mor. Germ. 14.

were

were intitled to receive, on the accession of a new Emperor to the throne. (l) That also by the Arabs against the Soldiers of JULIAN, retreating from the Persian war, originated from the same cause. (m)

This precarious state of the public security, almost naturally implies a general want of good faith. Examples of it are but too numerous during this unfortunate period, but which as they may be considered as *infractions*, need not to be mentioned. It was reserved however for such a state of the Law of Nations, for a People making Treaties, *deliberately* to bind themselves by a *previous* oath, to *break* the faith they were swearing to observe. This was supposed to be the case with the Gothic Nations settled by THEODOSIUS in Thrace, when they bound themselves by treaty to defend that part of the Empire. (n)

(l) Ammian Marcell. 26. 5.

(m) See Montesquieu's Reflections upon this sort of Law of Nations. Grand. et Dec. ch. 18.

(n) See the quarrel of FRAVITTA and PRIULF, in the presence of the Emperor THEODOSIUS, which against their will discovered to him their system of treachery.—Gibbon. ch. 26.

In such a State also, the distinctions between municipal Jurisdiction, and the national power, as it concerned Foreign Governments, could hardly be well understood,—and accordingly we find when MARCOMIR, a King of the *Franks*, had broken a treaty he had made with the Romans; he was not punished by the order, and at the discretion of the Sovereign; (the only mode which could consistently be pursued;) but was calmly summoned before the Tribunal of a Magistrate, and convicted and sentenced, like a Subject who had broken his allegiance. (o)

The hope of booty being allowed among the fair causes for war; the custom of exacting *Tributes* naturally followed; for in this situation of continued and universal hostility, nations could never be aware of the points of attack; and when every man armed himself against his fellow as a matter of course, it surpassed (human courage, and) human foresight, to be always effectually upon their guard. Much firmer people therefore than the Romans, might very naturally fall upon

(o) Gibbon, ch. 30.

the expedient adopted by them and others, to deliver themselves from these cruel evils. The ease however with which Tributes were granted, as naturally provoked new demands and new barbarities ;—Those exacted by the *Danes* and *Normans* are well known ; and the cruel avarice of these merciless Robbers, (who were only complying with the received Law of Nations according to *them*,) has been pathetically described by various Historians.—To give particular instances of their cruelty after those already cited, would be as unnecessary as they are disgusting ; it is sufficient to observe, that in mere predatory expeditions, this ferocious people, who were only to be curbed by the commanding genius of CHARLEMAGNE, spread themselves after his death, over Saxony, and Flanders as far as Mentz ;—and after ravaging the coasts, penetrated by the rivers into France ; where they pillaged and burned her Captial, and the fairest of her Towns, as far as the province of Dauphiny.—CHARLEMAGNE foresaw and dreaded their progress, and is even said to have shed tears, when he found them defying his name, and likely to break down the force of that order, which he seemed born to

to establish. (*p*) It would be unnecessary to attend their progress into Britain where they made themselves masters of the Throne itself; or to describe the extent of their barbarities and robberies, which could only be got rid of by means equally destructive of regularity and law, a general massacre of them by the people they had outraged.

Had these horrors been merely the effect of a burst of passion, or the heat of war; or considered as a direct infraction of Law; some consolation might be derived to the lover of good order. But it is his peculiar unhappiness to find that they were the mere effect of a compliance with *received* maxims, and a conformity with, what was conceived to be, no more than duty; for even independent of the convulsions produced by the irruptions of such butchers as ALARIE, AT-TILA and GENSERIE, the injustice of execu-

(*p*) See Velly. Hist. de France i. & Mallet. Northern Antiquities, i, 245. et infr. there is a long and full account of them in Mezerai, & Guiccardini's Descript. of the Netherlands. sub ann. 830, to 890. Even the stout William, in times far better regulated, was reduced to the humiliation of buying off the attacks of the Danes from his newly acquired kingdom.—Hoveden, p. 451.

tions

tions in cold blood seemed to be reduced to a system.

Of this nothing is a stronger proof than the common mode of proceeding against unsuccessful Generals when taken prisoners in battle. In those unfortunate cases, their deaths were regular and certain; and the horror is encreased when we consider that the custom prevailed long after CHRISTIANITY was introduced, and may be traced through a series of years so connected and extensive, that we are not able to point out the exact time when it ceased. We have seen its reception among the *Greeks*, and *Romans*; nor could it be expected that men less enlightened than they, should exceed them in humanity. We accordingly find the Law in full force at various and distant periods.—In the year 366, upon the defeat of the Alemanni, their captive king was hung on a Gibbet by the Army of JOVINUS.—In 406, RADAGAISUS monarch of the Goths reduced by STIL- LICH0 to lay down his arms, after being for some time a prisoner, was shamefully put to death. Fifty years afterwards, the great and just THEODORIE himself, orders for execu-
2
tion,

tion, RECHIARIUS the conquered king of the Suevi ; In 486, SYAGRIUS the Roman Commander in Gaul, was defeated, and beheaded by CLOVIS ; and in 532, the Burgundian SIGISMOND, overcome by the Sons of that Prince, was together with his wife and children buried alive in a deep well. Even the enlightened CHARLEMAGNE, who lived near three centuries after them, and whose genius has been justly said to have gone beyond his age ; is found calmly commanding four thousand five hundred Saxons to be beheaded in cool blood, after having slaughtered the bulk of their nation in various battles.

The Laws which could permit such deliberate executions, very naturally allowed as an act of mercy alone, what the more humane morality of modern times, has deservedly driven from its Code. We must not therefore be surprised to find personal SLAVERY existing throughout those Countries which admitted and brought into practice these maxims of blood ; and the greater the number or the rage of hostilities, the more fruitful was the source of servitude.

It

It was often made the instrument of political advantage as well as of private wealth: After the defeat of CHOSROES by JUSTINIAN; seventy thousand captives were led from the banks of the *Caspian*, to form the settlement of the Isle of *Cyprus*. The policy of CHARLEMAGNE, after an interval of above two hundred years, was of the same kind; and the half-subdued Soldiers whose allegiance he doubted in *Saxony*, became the faithful means of his defence in the provinces of *Friseland*.

The state of a Slave in those times, was little better than it was under the Greek and Roman power. (q) The horrid institution of the *KPHTIA* was indeed not known; but absolute power of life and death was claimed by the Master; and the warrior who at one moment had defied his enemy in the field; followed him the next, as subservient to his will, as the cattle which equally with himself, formed the estate of the Conqueror.

(q) Among the *early* Germans however, according to Tacitus, it was better. *Melior Conditio apud Germanos quam Romanos.*—*De Mor. Germ.*

In process of time, distinct classes of Slaves came to be instituted. Those of talents or personal beauty, were reserved for the services of the family; those, whose only qualifications were health and bodily strength, were chained as it were to the soil, and sold along with it as the means of its cultivation. They were considered indeed as a personal as well as a real property; the English law, in common with most others, dividing them into Villains regardant, and villains in gross; the one fixed to the Soil (*adscripti glebæ*), the other annexed to the person of the lord; (r) and there are instances of great numbers of them being transported from one state, and even from one province or kingdom, to another, (s) as will, or convenience directed.

(r) Littel. Sec. 181. Sir T. Smith's Commonwealth. 3. 10. Spelman's Gloss. voc. Servus. "Germanorum instar erant nostri Villani, a Servis multum diversi; quidam erant *prædiales*; quidam, *personales*," &c.

(s) Chilperie sent away whole families of Slaves from his farms near Paris into Spain; they were chained in waggons, a nuptial present on the marriage of his Daughter,

Greg. Tur. L. 6. C. 45.

To preserve an empire thus proudly administered, we must not be surpris'd to find that a difference, even in moral worth, was made by the Law between the Lord and the Villain. Hence, the deposition of a slave against his master in a Court of Justice, was never received ; (t) hence also, that humiliating distinction which the Frankish Conquerors made between the equivalent demanded for the death of their relations when any of them were killed ; and that paid for the death of the miserable Gauls. (u)

(t) L. L. Secti. Steph. Cap. 19. Resp. et Stat. Hung. p. 179. Edict. Theod. 48. ap. Lendenbrog. 249.

(u) See the Salic and Repuarian Laws with Montesquieu's reflections ; Esp. des Loix, and Observat. sur l'Hist. de Fr. par Mably. L. 1. Ch. 2. Also Gloss. de Du Cange, voce Servus, and Cap. 19 of the Leges Sancti Stephani. Resp. et Stat. Hung. p. 103. It cannot be expected that in a work like this, our attention can be arrested to consider at large the condition of slavery in the middle ages ; or if it could, the matter has already been too amply and too accurately investigated to attempt it anew. It is enough to touch slightly upon the subject, in order to shew that it came within the Law of Nations of these times. The learned reader need not be told of a whole cloud of Antiquaries and Critics upon this part of the Customs of Europe.

For the Condition of the Saxons, however, in *England*, see much learning in Dr. Brady's Gen. Pref. to his History, and Sir T. Smith, 3. 10.

The existence of Slavery, was long protracted in Europe. We saw it universal before the Christian æra; nor could it be expected that a new religion whose establishment was accomplished under a cruel length of persecution, and which looked for success to insinuation and conviction alone, should immediately effectuate the reforms which it came only to recommend. CHRISTIANITY however, in conformity with its principles, claims the merit of having gone farthest towards the abolition of this debasing Institution. It is indeed the great, and almost the only cause of its abolition, in the opinion of GROTIUS, who lays it down that by the old Law of Nations, *the practice was perfectly legitimate*; (w) an opinion in which he is fully borne out by the universality of the usage, both before and for some time after the æra of Christ. (x)

(w) De Jur. B. et P. 3. 7. 9.

(x) The chief and most antient division of men in the Codes of Jurisprudence in Germany, was into two ranks; the Freemen and the Slaves.

Heineccius Elem. Jur. Germ. L. 1. S. 21.

When

When however the milder doctrines preached by him, came really to be well understood and disseminated in their genuine purity; the effect upon this part of the then received Law, was visible and permanent. The professed and assigned reasons for most of the charters of manumission, from the time of GREGORY the Great, to the thirteenth Century, were the religious and pious considerations of the fraternity of men, the imitation of the example of CHRIST, the love of our Maker, and the hope of redemption. Enfranchisement was frequently given upon a death-bed, as the most acceptable service that could be offered; and when the sacred character of the priesthood came to obtain more universal veneration; to assume its functions was the immediate passport to freedom. (y)

(y) The enfranchisement of Slaves in England arose most particularly from these principles of piety: The manner of it has been well described by Sir Thomas Smith (Commonwealth, 3. 10.) and Dr. Brady (Gen. Pref. to his Hist.)

For the manner and motives of enfranchisement on the Continent, besides Montesqu. Du Cange, &c. see particularly Heineccius. Elem Jur. Germ. L. 1. Tit. 2. De Stat. Libertinorum, and the elaborate Note U of Robertson, Ch. V. Introd. S. 1.

Long before this however, CHRISTIANITY had begun to perform its office in softening the rough manners of the Barbarians; and though, as was natural, the savage understanding of a Goth, or a Scythian, might not be able to comprehend, or might perhaps at first despise the humane duties which it taught; yet he was insensibly led to respect, and afterwards to embrace a religion, which evidently tended to hold out protection to the unfortunate. ALARIC in the midst of the sack and pillage of the richest City in the World, gave the strictest orders to respect the Churches of the Apostles; and what is more wonderful at that time, to spare the lives of the *unresisting* citizens. ALARIC and many of his Goths, were CHRISTIANS; and in compliance with his commands, (or probably in the fervour of his own zeal,) one of his Captains in the moment of laying his hands on an immense hoard of plate, upon hearing that it was dedicated to the service of SAINT PETER, abstained from his prey, and was immediately ordered by his Commander to replace it in the church.

On a similar occasion, and in a moment of equal license, LUITPRAND, king of the Lombards,

bards, on the point of plundering the same devoted City; listened to the voice of the Pope; withdrew his Troops, and performing his devotions at the shrine of the Apostle, respectfully made an offering of the ensigns of his command. (z)

A sacrifice much more congenial with the genius of the new religion, was made by HERACLIUS. After the defeat of CHOSROES, fifty thousand captives were released by that monarch, consistent with the spirit which, to use his own words, made him devote his life *for the salvation of his brethren, to obtain in a crown of martyrdom, an immortal reward.* The dawning of the CHRISTIAN Law of Nations is also to be observed in the conduct of the same Prince, in his messages to the Persian Tyrant, exhorting him to spare the blood of his Subjects and relieve an humane Conqueror from the pain of destroying the fairest countries of Asia. (a)

(z) See Gibbon, and the Authorities he quotes, Chs. 31. 49.

(a) Id. Ch. 46.

Such among many, were the good effects of CHRISTIANITY upon the Laws of War during these times—Not that it is meant to be asserted, that it was the sole cause of the humanity which is sometimes discoverable in this dark period; since among the most pagan and ferocious nations, examples often appear of a magnanimity and compassion, which shine forth and dazzle us amid the surrounding gloom. Of this, the accounts of the North American Savages, present us with many instances; and of this also, we meet with strong proofs among the savages whose history we are examining. The Laws of several of their states, made express provisions to enforce the rights of hospitality, (*b*)

(*b*) By a Law of the Burgundians, tit. 38. S. 1. whoever refused Bed or Fire to a Stranger, was punished with a fine of three shillings. By another among the Capitularies, some centuries afterwards, any one who shut his house against another going a Journey, was fined sixty shillings. L. 6. S. 82. and among the Slavi it was even a maxim, “Quo nocte furatus fueris, Cras appone hospitibus.” See Note F. F. Robert, Ch. 5. Introd. A Law of the Wisigoths enjoins not only the good treatment of Merchants and Strangers, but that they shall be tried by their own Laws.

Fuero Jusgo. L. 2. P. 436.

and

and various histories might be related to shew how those rights were respected.

Eminent among the rest is the story of ALBOIN.

There had been old war between the *Gepidæ* and the *Lombards*, and ALBOIN, Prince of the latter, after overthrowing the *Gepidæ* in battle, pierced with his own hand, the Son of TURISUND their king.

It was a custom it seems among the *Lombards*, to reward valour with a seat at the royal table ; but the son of the King could not sit even with his father, until he had been invested with arms by some foreign Prince.—ALBOIN ambitious of this honour, did not hesitate with forty Companions, to visit the court of TURISUND, and was thus in the power of a hostile and injured Nation. The generous Monarch however, though he could not prevent his grief from bursting forth at the sight of him who had just slain his son ; respected the rights of a stranger, protected him from the vengeance of his nation, and sent

sent him home invested with the bloody arms of his child. (c)

But though the virtues of hospitality found eminent place in the conduct of many Individuals; yet stranger Nations in these times had little reason to be happy under the Institutions which governed their intercourse. The establishment of the FEUDAL SYSTEM, introduced all the vigour and harshness of military watchfulness; and men in the bosom of their own Society, seemed to keep guard as if in a camp. If a person therefore removed from one state to another, though it was in search of settlement, the superior Lord might seize him as his Slave. The cruel rights of the Inhabitants of the Sea Coasts against those who suffered shipwreck are well known; and among the Welsh, a madman, a

(c) Gibb. Ch. 45. The Paradise of Odin was enjoyed even upon Earth by this fierce Prince, who, having slain the only surviving son of Turifund, fashioned his skull into a Cup, which served him long after at his feasts. Ib.

leper,

leper, and a *stranger*, might be killed with impunity. (*d*)

If a man, even of the same state, past from one province of it to another, he was bound within a year and a day to acknowledge himself the Vassal of the Lord of the manor where he settled (*e*): The Jus Albinatus, is hardly yet even worn out on the continent, and bespeaks forcibly the inhumanity of the early Law of Nations.

(*d*) Leges Hoel Dad. quoted by the Author of Observations on the Statutes, chiefly the more Antient, p. 22.

(*e*) So jealous indeed were our ancestors of encouraging an intercourse with Strangers, that by a Law of the Conqueror, no man was allowed to receive a person unknown to him into his house for more than three days, unless he had been previously recommended to him.

Leg. Guil. Conq. apud Wilk. 227.

This was but similar to the spirit of the Saxon Laws of H. Lotharius, Eadricus, and Edward, which enjoined that the host should be answerable for the delinquency of the stranger, in case he entertained him in his own house and nourished him with his own food for three nights together.

Wilkins, Leg. Sax. 9. 203. De Hospitibus.

So also L. L. Withrædi; Si peregrinus vel advena devius vagetur, et tunc nec vociferaverit, nec cornu insonuerit, pro fure comprobatus est, vel occidendus, vel redimendus. Id. 12.

Such

Such then was the situation of Europe from the fall of the Roman Empire, till about the opening of the eleventh century ; and we shall probably not be able to discover a period of its history, in which there is to be found, greater licence, less order, and consequently less happiness. In such a situation therefore we cannot expect that any very clear ideas of the rights of mankind, either as Individuals or as Nations, were entertained. Sovereigns found difficulty in conceiving, and more in enforcing a Set of Laws, which should be able to give peace to the interior of their own states ; and it was not till after the eleventh century, or rather till after the discovery of the Pandects of JUSTINIAN, that the municipal Laws of the kingdoms of Europe came to assume any great regularity of shape. We may suppose then how little probable it was, that there could be any thing like a Code under the title of the Law of Nations. To such a Law indeed men never seem to have appealed ; CHRISTIANITY, it is true, obscured as it was, by the interpretation which the Popes chose to give of it, sometimes interfered with effect ; but with respect to maxims of justice, or a common set of Laws for the government of
States ;

States ; they seem not merely to have been shapeless, but absolutely unknown.

An enquiry might here very naturally be made into the nature of the TREATIES which were entered into during this period ; ALLIANCES and positive CONVENTIONS, often supplying the place of general maxims of justice, and forcing men to the observance of an equity which the rudeness of their manners prevents them from perceiving by nature. It is thus, as we before hinted, (*f*) that Barbarous and Infidel Nations have been insensibly introduced into more polished Classes, and led to the cultivation of more humane Laws. But the World was so particularly situated, and the darkness so universal during these times ; that while the barbarous nations were allowed absolutely to wanton in every indulgence to which the possession of the most savage liberty could prompt them ; there was no people within their sphere, to set before them a better example, or incorporate them by TREATIES, with a better order of society.

(*f*) Chap. V. ad fin.

In

In common Wars, where the conquered people are allowed some indulgence, and respect is paid to their manners and arts; if they excel their conquerors in those points, (which has often been the case,) they have sometimes been the means of polishing even those who enslave them, the stubborn superiority of the latter condescending to adopt their learning or refinements; and thus it was between Greece and Rome. (g) But the destruction of the *Roman* World, was so sudden, and so total; and the object, as we have observed, was so evidently Extermination; that the Barbarians preserved the manners of the desert, amidst the most splendid materials, for civilization, for science, and for elegance. When these materials were destroyed, as they soon were, no other opportunities for recalling them presented themselves from foreign quarters. The West was unknown: the South was scarcely believed to be inhabited beyond certain latitudes; and it was from the East and from the North, that the

(g) The History of the Tartars and Chinese presents us also with an eminent example of this.

deluge

deluge came. If any nation could have improved them at all by treaty and alliance, at this time, it seems to have been the *Chinese*; the doctrines of CONFUCIUS having been cherished among them long before CHRIST. But that extraordinary Empire was removed to a distance far too great from the sphere of their intercourse, to be of the smallest service to them; and possibly, if it could have heard of what was then passing in Europe, it might have considered it as our present nations consider the revolutions of Wydah, or the Caffres.

EUROPE was therefore left absolutely to itself for improvement; and under such circumstances, we cannot be surprised that its progress was slow. During the middle ages there is consequently a great dearth of diplomatic knowledge; and the Treaties of those times, afford us absolutely nothing to observe upon, as far at least as they relate to the Law of Nations.—What they do present, however, mark them as nations actuated by one common spirit; and though they are almost all *ecclesiastical*, and relate chiefly to the foundation
of

of Convents ; the building of Churches ; and the grant of immunities to the Priesthood ; (*b*) yet that alone distinguishes them from the rest of the World, under the forms of a characteristic RELIGION. (*i*)

(*b*) Vide the Corps diplomatic universel par Dumont—the Cordex Diplomaticus of Leibnitz—the anonymous Recuil des Traités, & Mabilion de re diplomatica—passim during these ages.

(*i*) The forms also in which these Treaties run, prove this very strongly.

The name of Christ, and of the Holy Trinity, was invoked with great Solemnity ; and this form, which continues to this day among Christian Nations, began at least as early as the time of Charlemagne.

See Du Mont. I. I. to 6.

CHAP. IX.

THE HISTORY OF THE LAW OF NATIONS IN EUROPE,
FROM THE ELEVENTH TO THE FIFTEENTH CEN-
TURY.

IN the last chapter we observed that barbarity and disorder continued to overwhelm Europe till towards the opening of the eleventh century : we must not however suppose that the ferocity of manners and irregularity of principle, which have been recorded, perished all at once after that period. Changes in these points are for the most part effected by the slow lapse of time ; for while the whole external face of a country may be altered in a few months by labour and industry ; such is the fixed nature of habit and character, that it requires a long course of years to make them unbend, and many a generation wholly to destroy them. The picture therefore which we had of the customs of nations, in the preceding chapter, continues the same in its out-lines and greater features, long after the commencement of

the period before us; and though by degrees its tints grow fainter and fainter, till at last they are lost in one far more agreeable; they are still to be traced in full strength through a long line of years, and several centuries pass away before they are entirely expunged. Previous therefore to the ample consideration which we mean to give of the particular circumstances which bore upon, and contributed to alter the law, it will be more perspicuous if we pursue, in this place once for all, the account of such events as justify these observations.

It is one of the most painful tasks of history to be obliged to record the facts which disgrace, as well as those which ennoble mankind, and in examining the customs which prevailed during this period, our humanity will be but too often shocked. Though frequently more regular, they were sometimes not less barbarous than they were during the ages of which we have just been treating. They must however be related, as without them, the account of the times, though it might gain in softness, would lose
in

in accuracy and truth, the most essential points of an historical enquiry.

Of all the nations which at this time pretended to the little civilization that was known, the Normans seem to have taken the lead in the display of cruelty and insolence, as well as of valour. In England they are described by the Monks, as Devils rather than as men, and from their delighting in blood more than other nations, were supposed to be let loose by the Almighty as the ministers of his vengeance. (*a*) If the facts recorded of them are true, they seem indeed to justify the conclusion. They are said to have put their prisoners to the most unheard of tortures, in order to discover treasures that were supposed to be concealed; they suspended men over fires by the head, the feet, and the thumbs; they crushed their brains with tight ligatures, and threw them into dungeons swarming with serpents. (*b*) When they turned their eyes on the softer sex, left destitute of protection by the slaughter of

(*a*) H. Huntingdon, p. 212.

(*b*) Chron. Sax. p. 238.

their kindred, no law or sentiment of generosity could defend them from their brutality; the Cloister alone afforded them security for their chastity; a proof that the conquerors proceeded on a sort of system, and that their violence was the effect of received customs which knew what was to be respected, not of the mere heat of battle which respects nothing. There is a remarkable confirmation of this in the case of MATILDA of Scotland, who, though a foreign and *neutral* Princess, at that time in England for her education, was obliged to assume the veil under William the First, and was married afterwards to his youngest son. The marriage of a Nun being unlawful, and the clergy examining her upon the point, she assigned the defence of her chastity as the sole motive for her profession: The plea was allowed to be a good one from the *known and acknowledged* customs of the Normans, and was adopted by many others in the same situation and with the same success. (c) Such was the conduct of a people who stigmatized their victims with the name of barbarians, (d) an appellation in which,

(c) Eadmer. Hist. L. 3.

(d) William of Poictou. p. 202.

added to the rights they assumed upon it, they seem to have imitated the insolent ferocity of the Grecian law of nations, mentioned in a former chapter. (*e*)

The barbarity of the *Scotch* customs of war appears equal to the *Norman*, and the general ravage of a Scottish invasion, more particularly that of DAVID the First, may be compared to Scythian cruelties; the sick and aged were murdered in their beds, infants at the breast, and priests at the altar. David however was famed for humanity, and the only excuse for him is, that the received customs of the troops he commanded, made it useless for him to forbid what he could not prevent. (*f*)

In *Italy*, which claims to have been the first to emerge from the barbarism which desolated Europe, cruelties not less shocking were often exercised. At the close of the twelfth century, MARCUALDUS, Seneschal of the Empire, and pretender to the regency

(*e*) See chapter vi.

(*f*) Lyttelt. Hen. II. I. 183.

of Sicily, invaded that Island : He was so far regular as to wait the denial of his demand, before he declared war. When it commenced however, he burst like a storm upon the unfortunate people ; he buried most of his prisoners alive ; he burned the Ecclesiastics ; and those whom he treated with the greatest lenity he threw into the sea. (g) In 1264, MAINFROY, the natural son of Frederick II. making war upon the pope in Tuscany, punished the prelates who fell into his hands by mutilation and death. (h) On the other side his rival and conqueror CHARLES of Anjou reserved numbers of the prisoners whom he took at the battle of *Beneventum* for his entry into *Naples*, where they were put to death like common criminals ; (i) in revenge for which, and other cruelties, twenty years afterwards, two hundred gentlemen taken by the Sicilians in a naval battle, were beheaded in cool blood by the famous admiral LORIA. (k)

(g) Ep. 157. ap gest. Innocent III.

(h) Burigny Hist. de Sicil. 2. 145.

(i) Id. 21. 160.

(k) Id. 2. 208.

A milder punishment on that occasion was experienced by the common soldiers, who were sent to the galleys, and who as a mark of infamy were first condemned to have their hair cut off. (*l*) It is remarkable that the loss of hair should have continued thus long in Europe to be a sign of disgrace. Under the *Merovignian* race of kings in France, it was the same as the loss of the crown; and amid the frequent revolutions which that family underwent, every dethroned prince was regularly shaven and thrown into a convent, after which it was supposed that he could not pretend to public affairs. The pride of long hair was extremely antient among the northern nations, and is to be traced far back among the Scandinavians. (*m*) To endeavour to account for it, any more

(*l*) Burigny Hist. de Sicil. 2. 207.

(*m*) See the story of the young men of *Fomsburg*, put to death by Thorchill. The seventh of them, says the record, had long fair hair, as fine as silk, which floated in curls and ringlets on his shoulders,—being asked what he thought of death, I receive it willingly replied he; I only beg of you one favour, not to let my hair be touched by any one of lower degree than yourself, nor be stained with my blood.—Mallet's North. Antiq. 1. 205.

than many other human prejudices, would probably be vain ; it is sufficient to have remarked the fact.

Perhaps indeed it may be denied that these and a number of other examples were in conformity with the received laws of war, and they may be supposed rather to have arisen from the accidental bursts of violence in particular men. Their universality however, and, what is worse, their duration all over Europe, prove them to have been the consequence of settled customs ; and the custom of nations, as has often been observed in the course of this work, is the only law which can govern them, when particular conventions have not been agreed upon. Numbers of the cases of barbarity which present themselves, are besides so regular and uniform in the circumstances of their severity, that they must have been founded on general maxims. There was a fixed object proposed in them, and they were the means adopted to obtain it.

Among these might be reckoned the barbarous military punishment of *mutilation* ;
instances

instances of which are perpetual throughout the histories of Europe. They are matters of horror, but they must be related, and we may then judge whether they can be deemed mere acts of disorder.

In the tenth century, THEOBALD duke of Spoleto, who is described by the historian as not undeserving the title of hero, having condemned his captives to the most odious of all mutilations, granted them mercy at the prayers of a woman. Being asked however what punishment her husband deserved should he be again taken in arms, her answer marks the spirit of the times. "He has eyes and a nose," said she, hands and feet, these are his own, and these he may deserve to forfeit by his personal offences." (*n*) The maxim continued long afterwards in Europe. Not to go into our own story beyond the time of William the Conqueror, whose severities this way are well known; his son RUFUS took vengeance upon the Welsh in the

(*n*) Luitprand Hist. L. 4. ch. 4. I have transcribed Gibbon's translation. See the whole of that curious story. Dec. & Fall. 10. 254.

year 1098 by cutting off their feet and hands: (o) In 1107 Robert duke of Normandy lost his eyes for endeavouring to break prison to which the laws of war had condemned him. (p) In 1136 Magnus king of Norway was emasculated by Eric of Denmark; (q) and in 1190 the Suabian Emperor Barbarossa, delivered his captives at Milan to the knife of the executioner, or shot them from military engines. In the next century Marcualdus punished the Sicilian nobles with different mutilation; and sixty years afterwards Mainfroy, as has been observed, made war on the clergy in the same manner.

The barbarous treatment of Roger II. by the Emperor Henry VI. may be attributed to motives of policy, rather than the received customs of war; nevertheless we can have little idea of the regularity of those times, when even with these motives, a king conquered by another in open war, was emasculated, and de-

(o) Cod. Leg. Vet. Spelm. ap. Wilk, p. 283.

(p) Mat. Par. 60.

(q) Mod. Un. Hist. 28. 461.

livered over to perpetual imprisonment, in order to cut off all hope of posterity. (*r*)

At the siege of Lisbon in 1370, it was the custom of the Spaniards says Froissart, when they took a prisoner, to tear out his eyes, and cut off his feet and hands, and in that condition to send him back with a message to his countrymen, threatening them all with the same fate. (*s*) Lastly it is said to have been the resolution of the French before the battle of Agincourt in 1415, to cut off the three fingers of the right hand of every English archer who should fall into their power; a design of which Henry well knew how to take his advantage, in his speech to the soldiers on that memorable day. (*t*)

Shocking as this mode of military vengeance appears, we probably are not to attribute

(*r*) Ut spem omnem ei successionis Henricus adimeret, et de jure hæreditatis futuræ posteris litigandi surriperet causam, genitales illi partes defecans, Eunuchum fecit, et carceri ad mortem usque addixit.—Fazellus. de reb. Siculis. 435, 39.

(*s*) Froissart B. 3. ch. 28.

(*t*) Villaret Hist. de Fr. 3. 172.

it

it altogether to the ferocity of the times, and certainly not to the sudden passion of individuals. In all probability it took its rise from deliberate views of policy. In an age when war was the sole business, and the power of doing active mischief was therefore considered as the highest endowment, the value of the members of the body was heightened in proportion; and as the theory of punishment speculates chiefly on those things on which it best can take effect, the forfeiture of the limbs came thus to be a common penalty even under municipal laws. We cannot therefore wonder if under the law of nations, where so much must always be left to the discretion of the conqueror, the same spirit should appear. Accordingly, it seems to have governed both the warrior and the legislator, and was found in the camp as well as in the hall of justice.

Another strong mark of defalcation of proper principles, rather than of mere bloodiness of disposition, appears in the frequent use of poison, which we find during this period. If the death of enemies was the
chief

chief object in battle, it was of little consequence it was supposed, how it should be accomplished. Hence the use of poisoned arms, and the still more shocking expedient, sometimes fallen upon, of poisoning the wells of a country or town through which soldiers were to march, or which they besieged, was at least customary, if it was not absolutely legitimate. The death of Cœur de Lion was owing solely to the poison of the arrow which wounded him; (u) and so far down as the year 1563 we find an instance of the same kind in France; Ambrose Earl of Warwick having died of a wound which he received in the leg, at the defence of New-haven, by a poisoned bullet. (v) The latter horrid practice, (not to stop here at the supposed manner in which the Greeks got rid of the Crusaders,) is to be found at least as far down as the siege of Bourges in 1412, where the French are said to have corrupted the

(u) Mat. Par. 195.

(v) Birch. Mem. of Q. Eliz. i. 6.

fountains in the suburbs, the better to cut off the besiegers. (x)

A prisoner in these early ages being supposed to be perpetually at the mercy of his conqueror, even long after the battle in which he was taken; it was not considered as unfair to look upon him as an hostage for what might be done by the enemy, or to threaten and to exercise severity against him, in order to extort what otherwise perhaps might not have been easily obtained.

Upon this principle it was, that HENRY the Fifth proceeded in several of his sieges in France. At *Rouen* in 1418 gibbets were erected all round the city, and as a mark of what the inhabitants might expect if they persisted to defend themselves, the prisoners were hung up upon them in sight of their friends. The same conduct was pursued at *Monteran* in 1420.—Yet Henry after the capture of *Rouen*, had stipulated that a large body of citizens who had been expelled the

(x) Monstrelet. Chron. de Fr. sub. an. 1412.

city in order to save provisions, should be restored and fed for a twelvemonth at the expence of the inhabitants; (y) and from this and other instances, (particularly that famous proof of his knowledge of what good order required of him which has immortalized his youth,) it should seem that it was not so much his own barbarity, as the custom of the times which led him into these cruelties.

Upon this principle also it was, that *Beatrice* sister of *Constance* queen of Arragon, was delivered from a long captivity in which she had been held by Charles of Anjou the conqueror of Naples. The Arragonians having defeated and taken in a naval battle the prince of Salerno, the queen dispatched a vessel with him into the port of Naples, where the captain calling forth the princess his consort, pointed out her unfortunate husband on the deck, an executioner at his side, and menaced him with instant death if *Beatrice* was not given up. This was done upon the spot, (z) and he himself was after-

(y) Monstrelet. Chron. de Fr. v. i. ch. 201, 225.

(z) Burigny. Hist. de Sicile 2. 208.

wards detained to be once more the instrument of the same kind of policy. His father meditating the siege of Messina which was the place of his captivity, the Messenians threatened again to put him to death if the king should dare to set foot in Sicily. (*a*)

The history of this house of Anjou is fertile in events of consequence to the law of nations.—Far before the rest is the case of the unhappy CONRADDIN. This unfortunate young prince, if lineal succession could have been allowed to take its course against the infallible will of the sovereign of Rome, was the undoubted heir to the crown of Sicily. (*b*) But that mighty power having through hatred to his family bestowed the Kingdom, whenever he should conquer it, upon the Count of Provence, and the battle of Beneven-

(*a*) Burigny Hist. de Sicile 2. 208. It was a policy of the same kind which was supposed to have saved Paris from the duke of Brunswick in 1792, when the unfortunate Louis XVI. was detained prisoner by his subjects.

(*b*) He was the grandson of the famous Frederic II. Emperor of Germany and king of Sicily, whose quarrels with the Pope are so celebrated in history.

tum having decided it in his favour, the Count succeeded quietly to the enjoyment of his conquest. After a few years however, the young Conraddin with a spirit of adventure far beyond his age, seconded by his friend and cousin Frederic of Austria, as young as himself, prepared to assert the rights of his house. They were both of them met, defeated and taken by the inexorable Charles, whose treatment of them on this occasion forms a case in the law before us, about which there has often since, been much difference of opinion. Unwilling to incur the character of a tyrant who could himself bear all the guilt of blood and murder, he resolved to adopt a conduct infinitely more prejudicial to the rights of mankind; since men may guard against what all allow to be forbidden, but can never escape the murder which is sanctioned by law. Assembling therefore the judges, he brought his prisoners before them, and after having heard with care (to use the expression of the historian,) “*all the reasons that could be drawn from law, and the jus publicum,*” they were found guilty of *treason*, and condemned to

suffer death on the scaffold. (c) They were accordingly led into the market place, and after having been reproached with their crimes, and forced with a refinement of cruelty to assist in the chapel at their own funeral service, they patiently submitted to the axe of the executioner.

When we consider in this remarkable case, that neither CONRADDIN nor his cousin FREDERIC were at all dependent upon Charles ; that allowing him to have been the lawful king, they owed him no allegiance, that they came in arms as open enemies, and made war upon him according to the forms of war ; we shall find difficulty in discovering by what maxim of justice they could be condemned. Carrying the rights of war to their utmost extent, Charles after the battle might have kept them in perpetual imprisonment,

(c) An antient French historian gives the following account of it. “ Illuec fit assambler plusieurs Seigneurs de loys, et autres sages hommes, & jugierent que *par droit* il devoit avoir les chiées coupés, comme cil qui estoient coupable de la malvestie et desloyeaité esgenée.”—Guillaume de Nangis. Ann. de St. Louis. 267. See also Velly Hist. de Fr. & Giannone. 19. 2.

or with strong hand might have swept them from the world, as enemies with whom he never could be safe. That he could condemn them according to the forms of a judicial process, can only be attributed to the peculiar irregularity of the age. At the same time it deserves to be marked as a fact well worthy of notice, that while every thing seemed to bend before the fortune of the house of Anjou, a man was found adventurous enough to question the validity of the sentence, and to write a book to prove that it was contrary to the law of nations. This was *Succaria*, a civilian of those days, (*d*) and his book, whether well or ill executed, presents us I believe with the first instance of the law of nations considered of importance enough to be treated as a science. The case however continued on the records of the world, and stress was laid upon it three hundred years afterwards, by those who condemned the unfortunate queen of Scots. (*e*)

More than a century after this, (1384) the same family furnishes us with another ex-

(*d*) Burigny Hist. de Sicile, 2. 174.

(*e*) Camden's Eliz. p. 376.

ample of the same sort of violence. *Jane*, the descendant of Charles, having adopted the duke of Anjou, brother to Charles the Sixth of France as her heir; the duke of Durazzo, who was next in succession, made war upon her, and became master of her person. As her own right to the throne, had never been doubted, there was not a pretext to put her to death; but *Jane* in the course of her reign, had been guilty of infidelity and murder, and the laws of nations of those times, which permitted every irregularity, seemed even to command, what certainly was but retribution. However sacred therefore the inviolability of crowned heads may be considered by more regular maxims; the maxims then in existence called loudly for her punishment, and she was strangled in consequence, by order of her conqueror, as she herself had strangled her first husband Andrew of Hungary some years before. (*f*)

The deliberate execution of officers after having behaved gallantly at their posts though forced to submit to superiour power, is still

(*f*) Pasquier recher. de la Fr. 6. 26.—Giannone 23. 5.

less to be defended. We observed instances of this in all the periods we have yet touched upon, and it continues during that immediately before us. The whole of the garrison before which RICHARD the First lost his life were immediately put to death by that prince, except the soldier by whose arrow he fell. But though pardoned by the king, in whom the seeds of true magnanimity seem only to have been stifled by the barbarity of the times, he was but reserved for a severer vengeance; being unmercifully flayed alive by *Markadeus* second in command. (g)

The well known fate of the brave Sir William Wallace in 1305 is a disgrace indelible to the English name and the character of the age.

In 1414 Beurnonville commander of Soissons for the duke of Burgundy, being forced to yield the town after a vigorous defence, was taken deliberately to Paris, and led to execution like a criminal, in revenge for the death of Hector de Bourbon, killed during

(g) Hoveder. p. 791.

the siege. (*b*) I pass over the condemnation of the famous Joan d'Arc, since (however it may fully the reputation of the duke of Bedford for not saving her life,) the avowed motive for her death, was her being an enchantress and an heretic, and therefore it cannot in any sort be brought under the customs of war. (*i*) Too many examples however may be adduced in support of the point in question, and it is remarkable that they occur most frequently in the very century from which a celebrated historian looks back upon the progress of mankind from the barbarous ages, and pronounces it to be immense; they occur also under characters which we are accustomed to regard with favour and respect.

At the siege of *Rouen*, mentioned before, HENRY the Fifth reserved by an express article of the capitulation, a certain number of

(*b*) Monstrelet ad an. 1414. v. 1. ch. 121. His head was stuck on a lance, and his body hung up by the arm-pits.

(*i*) See a long and able but partial account of her process in Villaret, 3. 432. et infr. & v. 4. ad init.

men

men on whom he should be allowed to exercise his rights of vengeance.

In 1421 at the siege of *Meaux*, Vaurus the Governor, in order to inspire an irreconcilable hatred into his soldiers against the English, sent his prisoners regularly to an Elm, (which on this account was called the Elm of Vaurus,) where they were hanged without mercy. "Let them be carried to my Elm," were the words of the inexorable sentence. The English of course retaliated, and with comparative mildness, contented themselves on the fall of the place, with putting to death six of the principal officers, at the head of whom was Vaurus himself. (*k*)

In 1431 the Commandant of Guernon, a garrison in Champagne, being pressed to extremity by Luxemburg, a French general, could only save the majority of his soldiers by yielding up every fourth and sixth man to the mercy of the conqueror.

(*k*). Chron. de Monstrel. ad an. 1421.

The garrison passed in view before Luxemburg, the victims were chosen, and executed on the spot by one of their own body, who was forced to serve this bloody office. (l)

In 1476 I find a strange law of war which in these days would be held equally infamous. The duke of Burgundy having besieged Nanci; efforts were made by several gentlemen to throw themselves into the place. One of them being taken in the attempt, the duke ordered him to be immediately hanged, *saying that it was contrary to all the rights of war, when a general had begun the siege of a town, and the fire of the artillery had commenced, for any one to attempt to enter the fortress in order to defend it.* Commynes who gives the account adds that this was really the custom in Spain and in Italy. (m) In 1479, Maximilian archduke of Austria, being arrested three days in his progress by Raimonet commander of the little castle of Malauny near Terouenne, that governour was instantly hanged on the surrender of the castle. (n) Near three hun-

(l) Monstrelet sub. an. 1431.

(m) Commynes, L. 5. ch. 6.

(n) Contin. of Monstrel. p. 71.

dred years from the time of RICHARD I. when such enormities were most frequent, had thus produced no amendment. The latter days of Maximilian come within the period to which the maxims and politics of later times are usually traced; but all through the century in which his name so often appears, the customs of war are peculiarly shocking.

The cruel and mutual ravages of the French and English are said to have been such, that neither man nor woman was to be seen in the whole country of Caux, except the garrisons of fortified places. (o) Nor can there probably be a more feeling description of the miseries of war in these barbarous times than the following translation of Speed from Polydore Virgil. “ While the English and French
 “ (quoth he) contend for Dominion, Sove-
 “ rainty, and life itselſe, mens goods in France
 “ were violently taken by the licence of warre,
 “ Churches spoiled, men every where mur-
 “ thered, or wounded, others put to death, or
 “ tortured; Matrons ravished, Maydes for-
 “ cibly drawne from out their parents armes

(o) Chroniques de France. 124.

“ to bee deflowered, Townes daily taken, daily
 “ spoiled, daily defaced, the riches of the
 “ inhabitants carried whither the Conquerours
 “ thinke good ; houses and villages round
 “ about set on fire : no kind of cruelty is left
 “ unpractised upon the miserable French.
 “ Neither was England her-self void of these
 “ mischiefes, who every day heard the newes
 “ of her valiant Childrens funerals, flaine in
 “ perpetual skirmishes and bickerings, her
 “ generall wealth continually ebd, and wained,
 “ so that the evils seemed almost equall, and
 “ the whole Westerne world echoed the
 “ groanes and sighes of either Nations quarrels,
 “ being the common argument of speech and
 “ compassion throughout Christendom.” (p)

Savage however as this picture has represented the English in their mode of making war, we have authority for believing that they exceeded all other nations in the regularity of their proceedings, at least according to the ideas of the age. The devastations that have been described were therefore common all over Europe, and miserable indeed

(p) Speed, p. 668.

must have been the lot of the world. (*q*) We cannot then agree with the remark of Dr. Robertson, (as far at least as it may be supposed to concern the law of nations,) that the progress which mankind had made towards order and refinement, from the fall of the Roman Empire to the opening of the fifteenth century, must appear immense. (*r*) Much no doubt had been done, towards the melioration of municipal establishments, much in some of the sciences, and in many of the arts: but of the law of nations, as founded on the principles of humanity and justice, men scarcely seemed to have thought.

While such poor respect was thus paid to the lives of persons who according to every sentiment of generosity, if not according to

(*q*) Philip de Commines who lived long in the century during which most of the inhuman practices that have been mentioned took place, has this remarkable passage.
 “ Or selon mon advis, entre toutes les Seigneuries du
 “ monde dont J’ay connoissance, où la chose publique est
 “ mieux traitée, et où il y’a nuls edifices abbatus, ny
 “ demolis pour guerre, c’est Angleterre; et tombe le sort et le
 “ malheur sur ceux qui font la guerre.” L. 5. ch. 19.

(*r*) CHARLES V. Introd. S. 2.

the

the principles of strict right, were entitled to them, we cannot be greatly surpris'd that even during times of peace, little regard was shewn to their liberty.

The power of moving at pleasure over the earth, is one of the natural rights of mankind; and though this right has been curtailed in consequence of the institution of property and dominion, so that men have no longer the liberty of entering at will into one anothers territories; yet whenever this is done, the utmost that ought to ensue is immediate expulsion. The right to detain them prisoners can never be justified, and is strenuously denied by all christian civilians. Nevertheless, we saw it universally exercised under the Greek and Roman law of nations, (s) and notwithstanding the efforts of the Christian Church, the practice was by no means worn out during the period before us. A great number of examples might be adduced to prove this. I shall confine myself to those few which were of the greatest consequence to others; and which from the sacredness of

(s) See chap. vi.

character in those concerned, made every attack upon their inviolability appear the stronger.

Possibly the celebrated Norman invasion, and if so, the whole tenour of our laws, and by far the most important transactions of the earlier part of our history, may in some measure be attributed to the existence of this unjust custom. In the year 1062, HAROLD duke of Wessex, an aspirer to the crown of England, was driven by a storm into one of the ports of the earl of Ponthieu on the coast of *Normandy*. There was no war at that time between the countries, but the Earl immediately seized him, in order, according to the custom of the age, to make advantage of his ransom. The prisoner however was demanded by the duke of Normandy his superior lord, not, as it might be thought, to set him at liberty without recompense, but before he gave it, to exact from him an oath that he would not oppose him in his own designs upon the throne. HAROLD declared the oath void on the plea of "*Duress*," and pursuing his fortune obtained the crown. The flimsy title of William received no small
sup-

support in the eyes of men from this supposed perjury of the duke of Wexsex, with which he did not fail perpetually to reproach him. (*t*)

A more celebrated example of this sort of injustice, appears in the case of RICHARD the First.

It is well known that that prince on his return from the Holy Land, was shipwrecked in the Adriatic, and endeavouring to pass through the territories of the duke of Austria, was arrested, thrown into prison, and afterwards sold to the emperor Henry the Sixth. Although this as might be expected, raised much indignation among his subjects, and actually called down the thunders of the Pope, to whom he appealed, against the authors of his misfortune; yet no mention seems to have been made of the transaction, as a breach of the custom of Nations. The one seems to have arisen from affection; the other from the reputation he had acquired in the service of CHRISTIANITY, and the

(*t*) See Will. of Malmsh. L. 2. p. 52. L. 3. p. 56. Mat. Par. p. 1.

well known law that no one who had assumed the cross should be interrupted by any act of hostility from enemies at home. Neither the representations of the See of Rome to Henry and Leopold, nor his own complaints, which resounded throughout *Europe*, make the least mention of it, as a violation of public law: on the contrary the affair in the measures that were taken upon it, seems to have been nothing extraordinary. Henry writes an ostentatious account of the arrest to Philip of France as a fortunate event which would please him, and claims merit from the transaction. (u) The immense ransom of 100,000 marks was demanded, several severe articles were prescribed, and sixty-seven hostages agreed upon for their performance, (x) as if he had been taken prisoner in open battle. The ransom was regularly raised according to the feudal provisions for such cases, and his mother Queen ELEANOR took a voyage to Germany for the settlement of the affair. Before it was completed however, there were many negotiations with the King

(u) Hoveden. 410. Heming. cap. 63.

(x) Rym. Fœd. i. 84.

of France who wished to purchase this illustrious captive, and it was owing chiefly to the veneration which the princes of Germany had conceived for him, that the sale did not actually take place. (y) The sale of prisoners, it is to be observed, *as a matter of property*, was perfectly within the rules of nations then in practice, as we shall presently have occasion to demonstrate.

Two hundred years afterwards, we find a remarkable instance of the same kind. In 1406 ROBERT king of Scotland, dreading the violence of his brother the duke of Albany, resolved to send his son and heir JAMES, for safety as well as for education, to France. The young prince sailing along the coast of Norfolk in his passage, and being seized with illness, had the imprudence to venture on shore. He was immediately arrested by the people on the coast and conducted to HENRY the Fourth, who sensible of the value of such an instrument against a nation with whom there was almost perpetual war, detained him captive. There was however at that time

(y) Rapin Thoyr. Sub an. 1194.

no war between the countries, and James even came provided with a letter from his father to Henry, in case he should be obliged to touch in his dominions. His captivity lasted eighteen years; during which, as the only palliation that can be offered, no care was wanting to complete his education. At the end of that time he was not released but on the payment of a regular ransom of forty thousand marks, and swearing to preserve a peace between the kingdoms. (*t*)

The next century saw the custom still in existence, and it is England again which furnishes the case.

In 1506 the archduke Philip, king of Castile in right of his wife, passing through the channel from the Low Countries to Spain, was forced by a tempest into Falmouth, where he landed, "weary and sicke," says Speed, "with the violent tossings of the sea." The news of his arrival (to pursue the account) stirring up the men in authority thereabout,

(*t*) Rym. 10. 299. 300.

Sir Thomas Trenchard, with the sudden forces of the country, not knowing what the matter might be, came thither, and understanding the quality of the stranger, sent off post to Court for instructions. Sir John Carey also came down to the coast with a troop of armed men, and Philip fearing constraint, because *they durst not let him pass without leave of the king*, was obliged to yield to his fortune. HENRY the Seventh, at that time upon the throne, knew the value of this opportunity too well to let it slip, nor would he suffer Philip to depart the kingdom, till he had extorted from him the Earl of Suffolk, his rival, to whom Philip had till then afforded an asylum. (y) Such were the maxims and conduct of States during the times before us, in cases where justice and the laws of hospitality, even as practised by savages, called loudly for the reverse. (z)

While

(y) Speed. 761.

(z) The practice was not worn out even so low down as the last century; Cardinal de RICHELIEU, whose progress was seldom retarded by scruples, having arrested the Elector Palatine, who had ventured into France upon the strength of being at peace with that kingdom. The real motive for his imprisonment, which was a very close one in the Bois de Vincennes,

While things during a state of peace bore so much the appearance of war, it was not unnatural for the great men of those times to view one another with a jealousy that was perpetually on the watch ; and the manner in which this jealousy displayed itself will furnish the next object of our considerations.

The mutual fears of private men are rendered useless, and are therefore dissipated by the protection of the laws ; but the fears of kings, who are the representatives of whole states, and who are therefore independent of all tribunals, can never be laid aside, except through the influence of good morals ; and where these are unknown, distrust must be universal. Hence the precautions which States are constantly taking one against another ; and hence, during the ages in question, the fear even of personal violence was indulged, and

Vincennes, was his design to treat for the army of the deceased Duke of Saxe Weimar ; the assigned reason, *the right which all nations had to arrest strangers who came into the country without a safe conduct*. See Bougeant's Hist. de la P. de Westph. L. 5. S. 60.

for the most part provided against, whenever Kings or Generals came into contact with one another. Of this there is a variety of instances, and none so remarkable as that exhibited perpetually by two Sovereigns who, from their weight and power, the one in temporal, the other in sacred matters, were without contest regarded as the heads of Europe. The continued clash of interests which divided the Popes and the Emperors, it is not our business to examine. It is well known, however, that the former boasted themselves the successors of Saint Peter; the latter of the antient Cæsars; in virtue of which, they both equally claimed superiority over each other. This, as might be expected, produced a lasting jealousy; and as the ceremonial of Europe ordained that the Emperors should receive their sacred unction from the hands of the Popes, it was usual, previous to the commencement of a ceremony where they were to approach so near to one another, for each of them to take an oath *that they would not be guilty of assassination during its performance.* This remarkable oath was duly administered to FREDERICK BARBAROSSA and
ADRIAN

ADRIAN IV. upon the coronation of the former at Rome, in 1155. (a)

Commines has set before us, with great liveliness of colouring, the mutual distrusts of CHARLES the Bold, and LEWIS the Eleventh.

After the battle of *Mont l'heri*, a treaty was set on foot between those two famous rivals, which was soon concluded at Conflans. While the negociation went on, there was a suspension of arms, during which they had several conferences together, between Paris and the Burgundian camp; and one day the Count suffered himself to return with the King within the very ramparts of the town. In modern times such a procedure would not have been reckoned uncommon; it would have caused neither surprise nor fear; the Count, however, is related to have been quite astonished (*tout esbahi*) at his own rashness, though he put the best face upon it; and when it was known at the camp, the whole army was filled with consternation. The soldiers, who were amusing themselves in the

(a) Voltaire, *Esp. des Nat.* 2. 2.

fields without the intrenchments, were immediately called in, and the generals assembled together in council, where, after many murmurs at the rashness of their leader, the Marechal de Bourgogne spoke as follows:—
 “ If this young madman *has thus gone to his*
 “ *ruin*, do not let us on that account be the
 “ ruin of his family and ourselves: let every
 “ man retire to his post, and be prepared for
 “ the worst; we are still strong enough, if
 “ we keep together, to reach our own fron-
 “ tiers.” Soon after this, the Count returned safe; and, upon seeing the Marechal de Bourgogne, cried out, “ Do not blame me, for
 “ I know my own madness.” All the army, says the historian, praised the honour of the king for not seizing him while in his power; which, however, it was not again thought prudent to tempt. (b) It is needless to observe upon the customs of that time in which praise could be given to a man for not doing what, according to our present ideas of justice, would have drawn upon him the universal execration of Europe.

(b) Commynes, L. I. Ch. 13.

When the same Monarch was invaded by EDWARD the Fourth of England, he wished to avoid extremities by negotiation; and for that purpose demanded a conference with the King at *Picquigny*. The distrust of the times made it impossible for these two crowned heads to meet without precautions, which would disgrace a modern transaction of the same kind. Upon a bridge over the Somme was erected a barrier of strong trellis-work, such as forms the cages of lions, the bars extending no farther asunder than to admit a man's arm with ease. Four gentlemen of the king of England's party were admitted on the French side, to see, says Commynes, what was doing among them; and as many from their party, and for the same purpose, on the side of the English. In this manner it was that the heads of the two greatest nations in Europe were obliged to meet (c) in the course of a transaction which of all others demanded confidence, and friendship, namely, the settlement of peace.

This mode of meeting on different sides of a barrier, was at that time common; Lewis

(c) Commynes, L. 4. Ch. 9, 10.

had taken the same precaution before, in his interview with his own constable St. Paul, upon the bridge of Noyon; (*d*) and the Dauphin his uncle had set him the example at his meeting with the Duke of Burgundy on the bridge of Monterau Faut yonne, where indeed the latter lost his life.

While such was the conduct of crowned heads and men of power towards one another, it was almost a necessary consequence that those who were only their representatives should experience a treatment, and live under customs, at least as irregular. The facts relating to the conduct towards Ambassadors and Heralds, during these times, evince it but too fully. Edward the Black Prince, who was the flower of chivalry, and whose courtesy in war will be renowned as long as our language shall exist, was himself, according to our present maxims, not without fault in this respect; and his conduct towards Charles V. of France, together with the deliberate advice of his council, as described by Froissart, will set before us very plainly the lax ideas upon this subject that were then entertained.

(*d*) Communes, L. 3. Ch. 11.

When

When Charles V. sent Envoys to him at Bordeaux, to summon him to answer certain complaints which were preferred against him; he was at first, says Froissart, quite melancholy at the affront. His barons and knights, (who it must be observed were then the most courteous and most accomplished in Europe,) counselled him *to put the messengers to death*, as the best recompence he could give them for their freedom; but this he forbade. Understanding, however, that they had come to him without a safe conduct, he ordered them immediately to be pursued, taken, and thrown into prison, which was executed with joy, adds the historian, by his council. (e) This conduct of the Prince of Wales made Charles more cautious in his declaration of war against his father, to whom, fearing perhaps the same sort of treatment, he sent his defiance by the hands of a mere servant; and the Ambassadors at that time at the court of England, are represented as *tous joyeux* when they found themselves safe within the fortrefs of Boulogne. (f) Villaret in representing this fact

(e) Froissart, V. i. Ch. 248.

(f) Id. Ch. 251.

observes

observes that the French King sent his declaration by a servant, fearing that the *law of nations* would not be more respected at London than it had been at Bordeaux. (g)

The term Law of Nations, however, is his own; Froissart relates the naked circumstance of the case, and does not seem even to hint that the procedure of the Prince was contrary to the notions of right at that time received. In fact, notwithstanding the chivalry of the age, which, as will be seen, produced much change in the laws of war; cases of nicety were too little understood, and customs were far too irregular to build upon them as a settled system; Villaret therefore, not only in this, but in other instances of his excellent work, goes too far in attributing any precise idea of the law of nations to these ages, which he constantly does when he speaks of their violation. In 1350, Raoul Comte d'Eu, constable of France and prisoner of the king of England, obtained leave to return home on his parole to procure his ransom, and treat of some matters of state. His conduct at

(g) Hist. de Fr. i. 389.

Caen, where he had been taken, is allowed to have been such as to render his fidelity to France suspected ; and he was painted to the king, JOHN II. as a partizan of EDWARD, come to stir up sedition. For this, and for other treasons which *it is expressly stated he had confessed*, he was beheaded ; and Villaret calls this, not only a breach of the law of France, but of the law of nations. (*b*) In the forms of his process, that the laws of France were violated, may possibly be true ; and undoubtedly according to the comprehensive and scientific mode in which the law of nations has been treated by the moderns, JOHN may be said to have been guilty of a breach of that law also, by executing a man who, though his own subject, was, as a prisoner of another, civilly dead with respect to him. But whether the state of the law in such times as we have described, admitted of such nicety of speculation, and whether, consequently, Villaret has not, in common with others, fallen into the fault of supposing 'the law of nations to be always the same, may be made a reasonable question.

(*b*) Hist. de Fr. I. 15.

Instances in truth perpetually occur, both before and after the above-mentioned transaction of the Prince of Wales, in which the rights of ambassadors and public messengers were set at defiance. In the year 1258 ELIZABETH, queen dowager of Sicily, sent ambassadors in behalf of her son to MAINFROI, who had possessed himself of the kingdom; and these deputies exercising their function with too much freedom, were seized and put to death by that hardy usurper. (*i*) The Ambassadors also whom she sent to the POPE on the same subject, by his contrivance met with the same fate. (*k*) In 1350 the Pope's legate, the representative, not merely of a temporal sovereign, but of the spiritual Father whom it was impiety to oppose, was hung up by the heels by Don PEDRO, king of Arragon, till he took off an excommunication he had ventured to publish; (*l*) and in 1464 LEWIS XI. in the case of the arrest of *Rubempré*, by the Count of *Charolois*, held publicly by the mouth of his chancellor, be-

(*i*) Burign. 2. 128.

(*k*) Id. Ib.

(*l*) Mod. Un. Hist. 17. 195.

fore PHILIP duke of BURGUNDY; *that the orders he had given him (Rubempré) to arrest the agent of Britany going to the court of Edward IV. his enemy, were perfectly legitimate, although at that time there was peace between Britany and France.* (m)

But if these proceedings should be esteemed mere violations of law, (and it must be acknowledged some of them are quoted more with a view to shew what was actually done, than what was absolutely legal;) there is one case in the thirteenth century, sufficiently remarkable, and which is expressly stated to have been the consequence of *received* custom. The patriarch of *Jerusalem*, says *Joinville*, had become the captive of the Emirs of *Ægypt*,
 “ Suivant la coutume alors usitée en PAYEN-
 “ NIE, comme en CHRETIENNE *que quand*
 “ *deux princes estoient en guerre, si l'un d'eux,*
 “ *venoit à mourir, les Ambassadeurs qui s'estoient*
 “ *envoyés réciproquement, demeuroient, prison-*
 “ *niers et esclaves.*” (n) It may be supposed that this law of nations related only to the

(m) Commynes, L. I. Ch. I.

(n) Joinville vie. de St. Louis, P. 67.

practice of war between *Christians* and *Saracens*, which, as we shall see, was often very different from that of the Christians among one another; the passage cited, however, observes expressly that it was the custom among *Christians* as well as Pagans.

Be this as it may, these examples, taken from the history of various nations, and various parts of the period before us, demonstrate the little regularity that had hitherto been introduced, even into a part of the law of nations which on account of its necessity is almost the first that is attended to by all communities. The very *heralds*, without which war can hardly be carried on, were not always safe. The duke of BEDFORD, regent of *France*, the most accomplished prince of his age, loaded the *Guienne* herald, sent to him by the famous *Pucelle*, with chains; (o) and though there is nothing which appears to have distinguished our EDWARD IV. for

(o) Villaret, 3. 408. Possibly he might be excused by the circumstances of the times. The duke fought for his nephew, *crowned king of France*; the herald summoned him to yield up the kingdom to Charles VII. the true king, and things were thus in a state of civil war.

cruelty beyond other generals of the time, yet when LEWIS XI. commanded one of his servants, who was not a regular herald, to assume the habit of one, and bear a message from him to the English camp, he is said by *Commines* to have fallen upon his knees and bewailed his fortune, as one sent to instant death. (*p*) *Molloy* makes a question upon this, whether the circumstance of the messenger's not being a regular herald, would have entitled *Edward* to have used violence towards him. (*q*) The question is not incurious, as the laws concerning heralds were, from their universality, part of the laws of nations; and they were known by a particular habit, which it would have been dangerous if every one had been allowed to assume at pleasure. As it was, the messenger (there being no herald in the camp of *Lewis*,) was obliged to make himself a coat of arms out of the ensign belonging to a trumpet, (*r*) and possibly his fright might have arisen from his knowledge that he was so far an impostor, as not to have been regularly cloathed with the character he

(*p*) *Commines*, L. 4. Ch. 7.

(*q*) *De Jur. Mar.*

(*r*) *Commines*. ub. sup.

was about to undertake. If this were so, it is a remarkable part of the law of nations. In the present day, any one taking upon him the ensigns of office, and actually employed by men having sufficient authority, would be considered in his person as sacred and inviolable.

In times like these, men had not quitted the only, or at least the chief mode by which mistrustful and perfidious nations endeavour to exact the preservation of good faith. We shall perhaps, in a future work, have occasion to treat of the general subject of *Hostages*: but as this is merely an historical enquiry, it will be sufficient in this place to mark the ideas entertained at this time of the rights concerning them. They were violent to a degree of cruelty and blood, it being imagined (and the practice accorded with the theory,) that an hostage was delivered up *to the absolute will and licence* of the person receiving him; and as good faith was no part of the character of the times, the lot of these unfortunate men but too often challenges our pity. Severe imprisonment, mutilations, and death in cool blood, attend them every where through-

throughout the histories. The Emperor HENRY VI. returning from the conquest of Sicily, carried away with him the principal lords and prelates of that kingdom, as hostages for the fidelity of the rest. The kingdom rising against him in his absence, they were all punished with the loss of their eyes. (s) The city of *Moissac* in Gascony, having given hostages to surrender by a particular period if not succoured, the duke of *Anjou*, says Froissart, came there with his army and hostages at the appointed time, and prepared to put them to death, in case the commanders broke their faith. The town *knowing the customs of war*, surrendered immediately. (t)

But the most ample elucidation of the custom is to be found in the history of the siege of a little castle in Britany belonging to Robert *Knollys* a famous general of Edward III. It is attended with such regular and deliberate cruelty, proceeded so plainly upon principles, and describes so fully the manners of the time, that it deserves to be related in all its circumstances.

(s) Heiss. Hist. d'Allemagne I. 112. an. 1197.

(t) Froissart, v. I. ch. 320.

Knollys, lord of the castle of *Derval*, near Brest, being called away to that city, left it besieged under the command of James *Bruce* (or *Brosse*). The French pressing the siege, *Bruce* agreed to surrender, provided it was not relieved within a certain time, and gave hostages for the performance of his agreement. In the mean while, *Knollys* returning from Brest, sent word to the French commander (who waited without hostility, the expiration of the time appointed,) that he would not keep conditions made in his absence by a person who had not sufficient power, and bade him retire or he would attack him. The French replied that they would keep on the defensive till the end of the period fixed for delivering up the castle, and they should then know what part to act. The points of difference in this curious case, which was plainly a SPONSIO, as it is called by writers on the law of nations, are not now before us ; we have merely to mark the fate of the *hostages*. Upon the expiration of the term, *Knollys* persisting to keep the castle, the duke of *Anjou* who had taken the command of the siege, and who, according to the historian from whom I extract this

I

account,

account, was as brave and generous a prince as any in Europe, was embarrassed what to do with the hostages he had received, and asked the advice of *Garcias du Chatel*. The latter, "who knew what humanity demanded, not less *than what the law of arms awarded,*" told him that *although the rigour of war gave him the right to put these unfortunate men to death*; yet as it was not their fault that *Knollys* continued obstinate, it would be more merciful to restore them. The duke acquiesced, and *du Chatel* conducted them out of the camp. In this state of the affair, he was met by OLIVER de CLISSON, one of the most distinguished of the French generals, and surnamed, for his severity, the *butcher*, who brought back the hostages to the duke, and represented to him that by this ill placed mercy he only encouraged the enemy to break their faith. By this, and other strong arguments, he obtained from him the power of doing as he pleased with them, and the unhappy men accompanied by an executioner, were instantly led down to the side of the castle ditch, where *Knollys* was summoned to a conference. He appeared at a window, and *Clisson* shewing him

him his friends, asked him if he would suffer them to die for his breach of faith. He replied that he was guilty of no breach of faith, that the blood of these innocent men would therefore be upon the head of *Cliffon*, who would thus well earn his surname of butcher, and that if he persisted, he knew how to retaliate. (u) The savage *Cliffon* executed his threat, (to the regret, adds Froissart, of all the army, two hundred of whom wept for their deaths,) and on the instant a scaffold was seen pushed out from the window where *Knollys* had appeared, and four French gentlemen being brought forth, were beheaded on the spot, and their heads and bodies thrown down into the ditch among their friends. Such were the particulars, and such the exactness of cruelty, in a case by no means in-

(u) The other particulars of *Knollys*' answer are a curious mark of the resignation that was expected from hostages in those days. "Robert Knolles repartit, les gentiz hommes que vous tenez sont mes amis il est vray, et il n'y a rien que je ne donnasse pour les sauver de votre inhumanité; *mais ces amis sont genereux*, et ils aiment mieux mourir que de m'obliger à faire une chose honteuse, comme celle de me rendre sous pretexte d'un traité nul et invalide."—Vie de Bertf. du Guesclen. 246.

curious

curious in the laws of war as admitted by our ancestors. (v)

Another great point which peculiarly marked the want of regularity and order which formed the character and the disgrace of the times, was that liberty which individuals claimed to do themselves right, upon foreign injury ; and their consequent danger of falling into the extreme of disorder.—The Kings and Magistrates of the time, had seldom the power, and not always the disposition to exert one of the most important functions of the Sovereignty committed to their hands, namely the defence of their subjects from external insults ; and in this weakness, or this indolence, they allowed the martial spirit of the age to take its course, and the private subjects of different monarchs waged very cruel wars against one another, for a considerable length of time, without calling out the force of their respective nations in their defence. I speak not here of the famous *private wars* of the Barons, which were the consequences of actual Sovereignty, and will

(v) Ib. & Froissart, v. 3. ch. 6. The latter says *Knollys* (or *Canolls* as he calls him,) executed *all* his prisoners.

be fully reviewed under another head, (*w*) but those heterogeneous depredations which were so often suffered *by way of Reprisals*.

Reprisals, under proper control and attention, come regularly within the scope of the Law of Nations as observed at present; and although I am aware that there is a great authority for the contrary opinion, (*x*) yet it is upon the whole settled, that no *private* hostilities, however general, or however just, will constitute what is called a legitimate and public state of war. (*y*) So far indeed has my lord Coke carried this point, that he holds, if *all* the subjects of a king of England were to make war upon another country in league with it, but without the assent of the king; there would still be no breach of the league between the two Countries. (*z*)

In the times before us various were the instances in which individuals possessing no pub-

(*w*) Chap. XII, On the Influence of the Feudal System,

(*x*) De Witte.

(*y*) Vattel. L. 2. ch. 4,

(*z*) Fourth Inst. 152.

lic character, and authorized by no public commission, assumed, and were almost encouraged to assume, the province of redressing the wrongs that were offered them from without. I will select one, which was not less remarkable for the account which it affords us of the sentiments of our ancestors, than it was important in the end, by involving the whole force of two mighty nations in a serious war.

In 1292 two sailors, the one Norman, the other English, quarrelled in the port of Bayonne, and began to fight with their fists. The Englishman being the weaker, is said to have stabbed the other with his knife.—It was an affair which challenged the intervention of the civil tribunals, but being neglected by the Magistrates, the Normans applied to their King, (*Philip le Bel*) who with neglect still more unpardonable, *desired them to take their own revenge.* They instantly put to sea, and seizing the first English ship they could find, hung up several of the crew, and some dogs at the same time, at the mast head. The English retaliated *without applying to their Government,* and things arose to that height of irregularity, that (with the same

U 4
indif-

indifference on the part of their kings,) the one nation made alliance with the Irish and Dutch; the other with the Flemings and Genoese. Two hundred Norman vessels scoured the English seas, and hanged all the seamen they could find. Their enemies in return fitted out a strong fleet, destroyed or took the greater part of the Normans, and giving no quarter, massacred them, to the amount of fifteen thousand men. The affair then became too big for private hands, and the Governments interposing in form, it terminated in that unfortunate war, which by the loss of *Guienne* entailed upon the two nations an endless train of hostilities, till it was recovered, (a)

While such laxity of discipline and of true subordination prevailed, we can little wonder if the passions of private individuals were allowed to enter into, and mingle with the public administration of the laws of war. When any one therefore had distinguished himself in zeal, or severity, or skill in the destruction of enemies; far from respecting

(a) Heming. 39, 40. T. Walsing. 58, 60. Velly. 4. 31, 32.

him, he was sometimes marked out for a vengeance, which extended itself even to innocent persons. Thus when *Geoffry Payen*, a French Captain, had been taken by some English troops in the wars of EDWARD III. they at first contented themselves with requiring him to follow them to the town of *Benon*, whence they had fallied; but upon questioning him, and learning that he was in the service of de CLISSON their mortal enemy, they then replied, “ Il faut mourir, puis que
 “ tu es à ce traître *Clisson*, le plus cruel de nos
 “ ennemis. La dessus, en haine de son Capi-
 “ taine,” continues the history, “ ils tuèrent ce
 “ brave Gentillhomme, ou pour le moins
 “ laisserent pour mort.”—In return for this, De Clisson took an oath that he would not ransom any prisoners for a whole year, but would put every one to death who fell into his hands. (*b*)

In these times also, there existed a custom in full vigour which is to be traced to very remote antiquity, but which the mildness of modern improvements seems to have totally

(*b*) Vie de Bert. Du Guesc. 224, 225.

abolished,

abolished ; I mean the practice of exacting *ransoms* for the liberty of prisoners.

Originally, from the supposed right of putting captives to death, it was held lawful to reduce them, as an act of mercy, to perpetual slavery ; of which in the preceding chapters we have selected various instances ; nor was the practice wholly worn out, even so far down as the fourteenth century, *Lewis Hutin* in a letter to *Edward II.* his vassal and ally, desiring him to arrest his enemies the *Flemings*, and to make them *slaves* and *serfs*. (c) Men however who made war for booty as well as from a thirst of vengeance, were soon willing to exchange a prisoner whose life might be burthenfome, and whose death was indifferent to them, for advantages more convenient and manageable. Accordingly, even the *Scandinavian* and *Scythian* nations, whose passion for slaughter so often makes us shudder, condescended at last to accept of ransom for their captives ; and during the ages we are examining, the custom appears

(c) “ Mettre par deveres vous, si comme forfaiz à vous, *Sers et Esclaves à touz jours.*” Rymer 3. 488.

to have grown universal and been regulated by fixed and known rules. The chief among them seems to have been, that the prisoner should remain the property of him who had the fortune to take him, though in some instances the king, as best able to judge of the expediency of giving liberty to particular enemies, claimed a right to retain them himself, at a price much inferiour to that which the captor might have expected. It is said by a French antiquary, that the king of France had the privilege of purchasing any prisoner from his conqueror on the payment of 10,000 livres; (*d*) and it is remarkable that the money paid by EDWARD III. to *Denis de Morbec* for his prisoner JOHN king of France, taken at *Poitiers*, amounted to that precise sum. (*e*) Edward afterwards exacted three millions of gold crowns, amounting, it is computed, to 1,500,000*l.* of our present money, for the liberty of his illustrious captive, (*f*) and a kind of reproach on such an immense dis-

(*d*) Pasquier recherches de la Fr. L. 4. ch. 12.

(*e*) Villaret I. 248.

(*f*) Id.

proportion, escapes from *Villaret* in this part of his history. (g)

The reproach is unmerited. However just it might be, according to the maxims of the time, that the conqueror should be rewarded for his valour and address in capturing a potent or dangerous enemy; the power of giving him liberty at pleasure, might have been very prejudicial to the state; and as every soldier fought for the good of the common weal, as well as his own, it was not a debt of justice to give him the whole, or even the greater part of the profit upon the prisoner. In the case of *John*, whole Towns and Provinces were yielded up to the state, besides the immense sum above mentioned: it cannot be supposed that *de Morbec* had any right to these! It was probably upon such principles that *Henry IV.* forbade the *Percies* to ransom their prisoners taken at *Holmdown*. They were the most illustrious of the Scotch nobility, and the king perhaps in retaining them, had views of state which looked much farther than the mere advantage of their *ransom*. He seems to have published his prohi-

(g) Hist. de Fr. i. 248.

bition to the *Percies*, in consequence of his prerogative, and though the proclamation acknowledges their right, (*b*) yet by his haughty perseverance in the exertion of his claim, he drove that powerful family into their famous, and, to themselves, fatal rebellion. (*i*)

It was thus however, for the most part, in the option of the persons in possession of a prisoner, whether or not to ransom him, the prisoner having no right to insist upon his liberty, however great the advantage he might offer in exchange for it; and in this, they were governed by motives of policy, drawn from his personal importance. ENTIVS king of *Sardinia*, the son of the Emperor FREDERIC II. was of such consequence to his father's affairs, from his activity and services, that upon being taken prisoner by the *Bolognese* army in 1248, no ransom that could be offered was able to obtain his liberty, and he died at the end of a captivity of four and twenty years. (*k*) CHARLES V. of France,

(*b*) Rym. 4. pt. 1. p. 36.

(*i*) Rapin Thoy v. Sub. an. 1403.

(*k*) Heiss Hist. de l'Emp. 1. 127. Pfeffel Droit Pub. d'All. 1. 398.

pursued

purfued the fame conduct towards the famous *Captal of Buche*, whom he purchafed of the gentleman who took him for 1200 livres, (*l*) and fhut up in the Temple at Paris, refufing every offer made to him by *Edward III.* for the liberty of an enemy he fo much feared. (*m*) Upon the fame principle, it was the dying injunction of *HENRY V.* not to releafe the duke of *ORLEANS* and the Comte d'Eu who had been captured at *Agincourt*, till his fon, then an infant, was capable of governing; (*n*) nor were thofe noblemen allowed to ranfom themfelves till feventeen years afterwards. (*o*)

When reasons of ftate however did not interfere, the general rule before mentioned, took place, and the conqueror made what profit he could of his prifoner. *Froiffart* fpeaking of the confequences of the battle of *Poitiers*, fays, thofe who had taken prifoners made as much of them as they could, “ car à celuy,

(*l*) *Froifs.* v. i. ch. 311. 328.

(*m*) *Id.* v. i. ch. 328.

(*n*) *Rapin.* fub an. 1422.

(*o*) *Villar. Hift. de Fr.* 4. 129. 131.

“ qui

“ qui prenoit prisonnier en la bataille, de leur
 “ costé le prisonnier estoit sien, et le pouvoit
 “ quitter ou rançonner à sa volonté.” He
 adds that the English became very rich in
 consequence of that battle, as well by ran-
 soms as other plunder. (*p*)

In a rencontre between a Scotch and En-
 glish knight, the same historian says, the for-
 mer pursued the latter, et pour *vaillance et*
pour gagner, and indeed according to M.
 Sainte Palaye (*q*) the ransom of prisoners was
 one great mean, by which the knights of old
 times were enabled to support the magnifi-
 cence, for which they were remarkable.

In the next century, the right continued
 the same, and by the articles of war established
 by *Henry V.* previous to his invasion of
 France, it was determined that “ be it at the
 “ battle, or other deedes of arms where
 “ prisoners be taken, who that first may have
 “ his *faye* shall have him for his prisoner, and
 “ shall not neede to abide by him.” (*r*) Mr.

(*p*) Froiss. v. 1. ch. 166. & v. 3. ch. 128.

(*q*) Mem. sur la Chevalerie 1. 309.

(*r*) MS. collect. of Petyt. preserved in the Library of
 the Inner Temple.

Barrington understands *faye* to mean the promise given to his captor by the person taken, that he would remain his prisoner, (s) in which he is supported by various passages in the French historians, “*donner sa foi*,” being the term made use of when a person agreed to remain captive (t)

It is not unreasonable to suppose with the author last mentioned, that the price of a man's ransom was, in general, one year's revenue

(s) Observat. on the more ant. Stat. 391.

(t) Thomas Vercler taken by a French Esquire at Poitiers, Froissart says *La lay creança il sa foy*, que recoux ou non recoux demeuroit son prisonnier, v. i. ch. 163. The Esquire received 6000 nobles for his ransom, and is said to have become a knight in consequence of this his accession of fortune.—*Bertrand du Guesclin* surrounded by the English at the battle of *Auray*, CHANDOS called out to him to surrender, and Bertrand “*luy donna sa foy*, et fut son prisonnier.”—*Vie du Bert. du Guesc.* 79.—*Joan d'Arc* being beaten in battle, saw the Bastard of Vendome near her “*à qui elle se rendit et donné sa foy*.”—*Monstrel.* ad an. 1430. So also at the battle of *Agincourt*, the duke of Alençon was killed in the moment when he had surrendered, and the king *vouloit prendre sa foy*. *Id.* v. i. ch. 148.

revenue of his estate, (u) and the reason which he assigns for it is farther supported by the custom of allowing men one entire year of liberty, in order to procure the sum agreed upon. In these his endeavours he was also considerably assisted by the provisions of the feudal law, which flourished in the height of its vigour during the ages before us, and by which, every vassal or tenant was obliged to assist his lord with a sum proportionable to the land he held, in order to redeem him from captivity. (w)

The

(u) Montluc in his Commentaries speaks thus of the ransom he expected from Marco Antonio a Roman knight. Il me va en l'entendement que facilement je prendrois prisonnier ce seigneur, et que si je le pouvois attraper, j'étois riche à j'amaïs, car pour le moins j'en aurois quatre vingt mille écus de rançon qui estoit son revenue d'un an, et n'étoit pas trop. From this it should seem that there were settled terms upon which the captor and prisoner treated, and that they generally agreed at the rate of a year's income, qui n'étoit pas trop. (See Sainte Palaye, Mem. sur la Chevalerie, 1, 309, 365.)

(w) Feud. L. 2. tit. 24. Hence the ransom of a king who was always at the head of the greatest number of vassals, would naturally amount to the greatest sum. Mr. Barrington who, had he pursued his communications on

The sums however which I find to have been taken of different prisoners vary perhaps more than the proportion of their revenues; personal consequence as was before observed having no doubt much weight in determining the value. BERTRAND DU GUESCELIN, who had no estate at all, valued his own ransom at 100,000 livres; (x) the ransom of a king of *Majorca*, of the royal house of *Arragon*, about the same period, amounted to exactly the same sum; (y) and DAVID king of Scotland, after eleven years captivity, paid 100,000 marks for his liberty. (z) The queen of *Edward III.* who may be said almost to have commanded at the battle of *Durham* where he was taken, required him of *John Copland* the officer who actually made him this subject, would have rendered this part of our work unnecessary, has quoted some antient lines (*Observ. on the Stat. 391.*) relative to *Hinckston Hill*, in *Cornwall*, supposed to be full of copper.

“ *Hinckston Hill*, well wrought,
“ Is worth a *king's ransom*, dearly bought.”

(x) *Vie de Bert. du Guesc.* 137.

(y) *Froissart.* v. 1. ch. 299.

(z) *Rym.* 5. 65, 68.

prisoner; but knowing his value he positively refused, on the plea *that no one had a right to demand him but the king*. EDWARD sent for him to Calais, where partly as a reward for his gallantry, and partly in acknowledgement of his claim, he endowed him with 500l. a year in land, and made him a knight banneret. (a) CHARLES of BLOIS, captured in this period of military glory for England, agreed to pay 700,000 crowns for his ransom, and left his two sons hostages for his good faith. (b) The famous MICHAEL de la POLE, duke of Suffolk, paid 20,000l. sterling when no more than a simple knight. (c) The duke of *Alençon* paid 200,000 crowns, for which he was forced actually to sell a part of his estates to the duke of *Bretagne*. (d) Even the lowest caprice sometimes governed the demand, where money was not a great object. LEWIS XI. having taken WOLFAING POULAIN, an officer of confidence of MARY of BURGUNDY, insisted upon some

(a) Rym. 5. 542. & Froissart, i. 139.

(b) Rym. 5. 862.

(c) Speed. 675.

(d) Villaret 3. 389.

famous hounds belonging to the seigneur de *Bossu*, as the only ransom he would take. *Bossu* at first would not part with his dogs; the king was obstinate, and a number of couriers passed between the parties on the subject, which was made an affair of state before it was settled. (e)

When such immense advantages were to be made of the persons of men of consequence; to take prisoners became a very primary object with those who went to war; and it operated well for humanity in one respect, by saving many gallant lives which might otherwise have been forfeited.

That they were forfeited in default of ability to pay, appears but too clearly in various, examples. In 1441, which is far advanced in the period before us, the English prisoners taken at *Pontoise* were brought to

(e) Garnier Hist. de Fr. 2. 23. By this time also it perhaps had grown into a custom to release the first prisoner made after the commencement of hostilities, without ransom. "Le Roy d'Angleterre commanda qu'on donnast congé à ce Valet, veu que c'estoit leur premier prisonnier."—Commines, L. 4. ch. 7.

Paris by CHARLES VII. a prince remarkable for mildness in that age. They were chained by the neck like dogs, and exposed nearly naked to the gaze and exultation of the populace. Those who could pay their ransom, were then set free; those who could not, who were by far the greater number, were bound hand and foot and precipitated into the Seine. (*f*) So little had the laws of war gained since the time of the *Avars*, who eight centuries before, had committed precisely such an act. (*g*) Under the reign of LOUIS XI. the same fate, and for the same default, was experienced by the inhabitants of *Liege*; (*h*) and HENRY V. when he ordered the deaths of his prisoners upon the alarm after the battle of *Agincourt*, saved those only from whom he expected considerable ransoms. (*i*)

Its effects however in another respect were disadvantageous, in so far as that it held out

(*f*) Monstrelet ad an. 1441.

(*g*) See Ch. VIII.

(*h*) Garnier's Hist. de Fr. i. 169.

(*i*) Rapin.

improper motives for war, and temptations, when war was declared, to commit violence and treachery.

The English are represented by Commynes, as always desirous of a war with France, from the recollection of the riches they had so often acquired, not only by the plunder of Towns, but the advantages made of numbers of princes and lords whom it had been their fortune to take. (*k*) The same disposition, and proceeding from the same motive, is mentioned by Hollinshed under the reign of Richard II. (*l*) The seizure already mentioned of *Richard I.* and *James* of Scotland, in times of peace, were perhaps owing in part to the avarice of the Captors. In 1387 OLIVER de CLISSON constable of France, being with *safe conduct* at the court of the duke of *Bretagne*, between whom and himself there had been old hatred; was shut up

(*k*) Commynes, L. 6. ch. 2.

(*l*) Vol. II. ad. an. 1383. Hence also the sturdy Hotspur is not unnaturally represented in his dreams to be talking of "Prisoners' ransom, as well as of soldiers slain."—First P. Hen. IV. Act 2. Scene 6.

in a tower, into which he had entered at the duke's desire to examine its strength. He was at first ordered by the savage Breton to be tied in a sack and thrown into the sea; but the latter being troubled in conscience, was afterwards glad to find his orders had not been executed; notwithstanding which, CLISSON was not released but upon a treaty of ransom for 100,000 livres. (*m*) During the wars of PHILIP and EDWARD III. there arose many a foldier of fortune, in other words freebooters, who no doubt were encouraged in the profession by the hope of making money by ransoms. CROQUART, a famous leader of what was called the companies, is described as having become extremely rich by ransoming castles and towns, which, as he was then in the service of no state, he could have had no right to attack.

In 1367, several knights of *Suabia* having associated to perform deeds of chivalry, were tempted to use their power for the very destruction of the good order they had sworn

(*m*) Froissart, v. 3. ch. 57.

to support. A rich Count of *Wirtemberg* residing in security at his castle at *Wildbad*, it came into the heads of these knights that they could procure a noble sum of money for the ransom of him and his family; and for this purpose, headed by a Count *Eberstein*, they attacked him, though without success. (n)

A fuller and more regular case appears in the conduct of *Thomas of Canterbury*.

While the duke of *Lancaster* besieged *Dinant*, in *Britanny*, a suspension of arms was agreed upon, during which the soldiers of each party had free liberty of ingress and egress, at their respective stations. One of the brothers of *Bertrand du Guescelin*, taking advantage of this, was exercising his horse in the fields, when he was met by a knight called *Thomas of Canterbury*, who seeing him richly dressed and well mounted, and finding him to be a brother of *Bertrand's*, immediately seized him and demanded a thousand florins of gold for his ransom. It was in vain that the prisoner urged the truce in his de-

(n) Spitler's Hist. of Werten. quoted by Putter. B. 3. ch. 3.

fence.—*Canterbury* persisted, and *Bertrand* coming into the camp to complain before the duke of *Lancaster*, he asserted roundly, that the capture was legitimate according to the rules of honour, and that he would prove it body to body. The duke, instead of preventing the combat, and giving liberty to the prisoner, was judge of the lists ; and it was not till *Bertrand* was victorious that his brother was restored. (o) In this case there could now be no difficulty, and nothing proves more fully than the circumstances related, the crude and irregular ideas of justice which were entertained during these times. No serjeant of a modern army, but would have condemned a man in the first instance, who had behaved like this lord *Thomas* of *Canterbury* ; yet notwithstanding the representations of *du Guescelin*, whose genius in the laws of war went beyond that of his cotemporaries, a battle was to be fought, and much ceremony gone through, before the commander in chief, a prince of royal blood, and eminent, according to the account, for his knowledge in those laws, could act with decision. Though

(o) Vie de Bert. du Guescelin. 32. et inf.

justice was at last done, it was only the consequence of the success of the injured party, and it is remarkable that the whole conduct of the duke of *Lancaster* is praised as a noble example of honour. (*p*)

The avidity with which men fought for prisoners made it also often dangerous to the conquered parties themselves. A man of consequence known by his arms, was not only marked out above the rest during the battle, but became an object of scramble and contention afterwards. At *Poitiers* the king of France was nearly torn to pieces by the soldiers, who claimed him as the great prize that was to enrich them. He was quickly carried off from *Morbac* his captor, and the cry of "It was I that took him!" resounded among all who were near him. Thus pressed, he was forced to cry out to them, "Gentlemen, gentlemen, lead me quietly to the prince of Wales, and do not quarrel about me, for I am of sufficient consequence to make you all rich." (*q*) In this situation

(*p*) Vie de Bert. du Guesclin. 32. et infr.

(*q*) Froissart, v. i. ch. 164. Seigneurs, Seigneurs, menez moi courtoisement, &c.

he was found by the earl of Warwick who was sent to enquire for him, and who rescued him from the crowd. At the battle of the Bridge of Luffac, *Carlouet* the French commander, fell into the hands of five or six soldiers who disputed so warmly about his possession, that to end the difference they were fairly going to kill him, when he was taken from them by an English knight. (r) At the battle of *Agincourt* eighteen French gentlemen had entered into an agreement to direct all their attacks against king HENRY, (most probably with the view of acquiring a fortune by his capture,) and hence one reason why the heat of battle was greatest about his person. The eighteen gentlemen perished in their attempt. (s) *Charles de Beaumont*, seneschal of St. Dié, is said to have died of regret at losing the great ransom he might have gained had he taken the duke of *Burgundy* prisoner at the battle of *Nanci*, instead of killing him as he did, without knowing who he was. (t)

(r) Vie de Bert. du Guesc. 201.

(s) Chron. de Fr. ad. an. 1415.

(t) Commynes, L. 5. ch. 10. n. 3. Garnier Hist. de Fr. I. 389.

I cannot quit this subject of ransom, though the account of it may appear already but too long, without observing that the value of a prisoner's liberty was considered as a species of wealth, and regularly transferred from one to another like any other property. In older times, as we have seen, the prisoner was actually a slave, and sold as such according to his qualities and accomplishments. In the ages before us, he was sold, not on account of his personal utility, but his ability and willingness to pay a certain price for his freedom ; or the value of which his detention was to the buyer. Hence instead of being allowed his liberty in order the better to perform the functions of a servant, it was the business of those who possessed him to keep him under close guard. COEUR DE LION was sold, to use the expression of his Ambassador at Rome, like an ox or an ass, (*u*) to the Emperor, who wanted to make money by his ransom : and PHILIP AUGUSTUS was long in treaty for him, in order to get rid of a powerful and irreconcilable enemy. *Lewis XI.* bought

(*u*) *Ac si bos esset, vel asinus, vendidit.*—*Mat. Par.* ad an. 1194.

the bastard of *Burgundy*, taken prisoner by *René* duke of *Lorraine*, for 10,000 crowns. (w) He had before that, bought *William* of *Châlons* prince of *Orange*, of the *Sieur de Groslé*, who had taken him prisoner, for 20,000 crowns, and as the prince was not able to repay him, required the sovereignty of his whole principality in exchange for his liberty. The possessors of the famous *Pucelle*, sold her to the English for 10,000 livres and a pension of 300 ; (x) and the earl of *Pembroke*, being taken prisoner by *Henry* king of *Castile*, was paid over, (his ransom valued at 120,000 livres) to *du Guescelin*, in part of the purchase money of some estates which that General had sold. The ransoms of several other English prisoners were sold at the same time for these Spanish estates. The money for the Earl however, as that nobleman was ill when he was transferred, was not to be paid by his Bankers at *Bruges*, till he should be *wholesome* and *plump*, “*Quand il feroit sain et en bon point.*” Unfortunately for *Du Guescelin*, *Pembroke* died before he left France, and

(w) Garnier, i. 335.

(x) Pasquier. Recher. de la Fr. 4. 12.

thus,

thus, says Froissart, the Constable lost his money. (y) Hence it appears that in these transfers, the receiver of the prisoner took upon himself the risk of losing him, and in case of death before payment, had no demand upon the person who sold him.

Ransoms were sometimes transferred as presents instead of money, which appears in the case of one of the family of *Blois*, presented by RICHARD II. to the duke of *Ireland*, who sold him to *Oliver de Clifton* for 120,000 livres (z). It should seem also that when any doubt arose concerning the prisoner's willingness or ability to pay, *securities* might be taken as in the regular transactions of barter and sale; and this was the case of *Henry Duke of Brunswick* in 1404, who being taken prisoner by the Count *de la Lippe*, was ransomed for one hundred thousand crowns, part of which was paid by the *securites* which he gave on that occasion. (a) In cases, however, which occurred within the Empire, its Chief claimed

(y) Froissart, v. i. ch. 320.

(z) Villaret, 2. 220.

(a) Puffend. Introd. 3. 289.

the right of annulling such agreements, which in the above transaction was actually done on the plea of a defect in the cause of the war between the parties, by the Emperor Robert. (*b*)

But the strongest example of regularity in transfers, and that, in a case when the captive was not a prisoner of war, is shewn in the transactions concerning *Zizim*, brother of *Bajazet*, Emperor of the Turks. That prince who had pretensions to the throne, and had been beaten in battle by the Sultan, fled for refuge to the knights of Rhodes. The knights fearing to draw down upon them all the forces of *Bajazet*, transferred him to the king of France, *Lewis XI.* who notwithstanding his superstitious passion for relics, refused the offer of all that could be found in the eastern Empire, in exchange for him, and carefully kept him in custody for the knights. Seven years afterwards, it being necessary to obtain the favour of the Pope, *CHARLES VIII.* yielded him to the See of Rome, and while he was on the way, refused the whole kingdom of Jerusalem which *Bajazet* offered to

(*b*) Rinius. Mem. de Bruns. 169.

conquer for him in exchange for this important prisoner. He continued at Rome six years longer, and then was transferred back again by treaty to the king, who wanted to make use of him in his wild projects upon *Constantinople*. The last sale however, if I may use the expression, was *fraudulent*, since he was supposed to be poisoned before his redelivery to the French, and died soon after. (c)

Such are the most prominent features of this remarkable custom, which was universal in Europe during these ages, but which has now wholly disappeared before the milder usages introduced by modern refinement. Captivity, in the present times, lasts no longer than the war which occasioned it; prisoners are still exchanged, as formerly, one against another, but at the end of hostilities, those which remain on either side, are set at liberty without ransom. The old practice is now found to exist only in transactions with the Mahometan nations.

(c) Communes, L. 6. ch. 10. L. 7. ch. 15.

CHAP. X.

IMPROVEMENT OF THE LAW OF NATIONS.

ALTHOUGH the sketch which has been given of the maxims which governed the intercourse of States during these times, exhibits for the most part strong proofs of barbarity and disorder ; the natural tendency of men towards improvement, had now begun to disclose itself. There were many causes for this which must be obvious to the reader of historical observation. The Storehouse of the North had been for some time exhausted ; the eagerness of desire after new habitations was at an end ; and though the thirst of conquest continued, war was no longer the signal for those exterminating ravages which swept away whole nations before the victors.

It was to the mighty and comprehensive genius of Charlemagne that Europe owed her first improvements ; and though his immense Empire split into fragments immediately upon his death, yet from his time the western

nations began to assume the outlines of that form and of those political institutions which they at present wear. The aspiring vigour of this wonderful man did more for the world than the exertions of whole ages before him. It extended every where the advantages of CHRISTIANITY; it improved the means of communication; it gave cities and a police to the forests of Germany; and, what was of decisive importance, it unveiled the shores of the Baltic, whence a torrent of Savages had perpetually poured down upon the nations who were then struggling into order. The geography, and the resources of the north came thus in some measure to be known; men were freed from the constant fear of extirpation in which they had lived; and, encouraged to become stationary, they were as wishful to preserve and regulate their conquests, as they had before been furious to extend them. Two centuries more, reared up the seeds which CHALEMAGNE had sown; and (notwithstanding the irregularities that have been described,) from the beginning of the eleventh century downwards, we find an evident change in the face of Europe.

By this time the different nations had assumed the appearance of a comparative union. Alliances among sovereigns were frequent; their independence and rights were tolerably well marked out; and though when engaged in war, their old barbarism was but too plainly to be discovered; yet their various modes of connection, and the customs which governed their intercourse, presented a regularity of shape and feature, which had before been unknown. A strong proof of this appears in the custom which began to be pretty general about these times, of *appealing* to neutral powers, when differences broke out among them; and this not only with a view to engage their assistance, or mediation, but also from their idea that the connections among them were so close, and their governing principles so much the same, as to render it necessary to lay before them the justice of their cause.

In 1176 we have a remarkable instance of appeal and mediation in the course of a contest between the kings of *Arragon* and *Navarre*. By the deed of compromise made between them, they each of them deposited four castles,

as a pledge that they would abide by the determination of HENRY king of England. Each party was to send Ambassadors to receive his Judgment by a certain day ; in the case of sickness, captivity, or death, they were to wait each others arrival for thirty days beyond the time appointed ; and then, in default of appearance, the castles of him from whom the delay came, were to be forfeited to the other ; but in the case of the death of HENRY, the Ambassadors were to proceed (subject to the same agreement,) to receive the judgment of the king of France. (a)

Not a hundred years after this, the just SAINT LEWIS sat in judgment upon the whole cause of difference between HENRY III. of England, and his barons. He had been chosen their umpire in form, and each party, the king and queen in person, attended him in all due solemnity at *Amiens*. Nor did he consider the power thus given to him of a trifling nature ; he proceeded to the most important acts of authority ; and in the name

(a) Rymer, i. 43.

of the Holy Trinity, annulled the famous constitutions of Oxford; decreed the restoration of the fortresses which had been put into the hands of the twenty-four barons, or rather Regents, of the kingdom; and finally ordained that the king should be restored to all his legitimate rights. (*b*)

In the same century, the famous quarrel between the Emperor FREDERICK II. and the See of Rome, was discussed in appeals and letters to the chief potentates of christendom, as well as by arms. The letters of the Emperor, particularly those to the king of England, are long and argumentative, and breathe the very spirit of a modern manifesto or state note. (*c*) In 1334 a treaty having been entered into by the king of *Bohemia* and other princes of *Germany* with the duke of *Brabant*, under the mediation of PHILIP of VALOIS, the latter styles himself at the head of the deed—"Nommé et eleu juge, traicteur,

(*b*) See these and a number of other articles of no less importance.—Mat. Par. 992. & Spiceleg. Vet. scrip. 643.

(*c*) Literæ Fred. ad. Amicos. M. Par 490. 496. 520. 527.

“ et aimable compositeur, entre hauts hommes
 “ nos chiers amis,” &c. (*d*)

But the most regular appeal which in those days appeared, was that published at Westminster by EDWARD III. against JOHN of France in 1356. It is addressed to the Pope, to the Emperor, *and to all the princes, lords, and people of CHRISTENDOM in general.* He complains that people of that age wish to palliate their own faults by blasting the innocence of others; and he therefore believes it a duty he owes to God and to humanity, to paint the king of *France* in his proper colours. He also justifies the king of *Navarre* from the infamy imputed to him in making a treaty to deliver up Normandy, by declaring before God and on the word of a king, that no such treaty had been made. (*e*) This was preparatory to the war which he afterwards declared against France, and no transaction or manifesto of the most regular modern state, can be more orderly or legitimate.—

(*d*) Preuves des Troph. de Brabant. P. 160. ap. Du Mont. an. 1334.

(*e*) Rymer. 5. 852.

The next century saw the same sort of custom in the appeal made by the kings of *Castile* and *Arragon* to the arbitration of LEWIS XI. king of France, in 1463, (f) and we shall soon have occasion to observe on a variety of other appeals; which, as they sprang from a particular source, and will be treated of at large in another place, need not be mentioned here.

Such then was a small part of the regularity of appearance, notwithstanding the instances of barbarity that have been related, which Europe assumed during the period we have proposed to examine. It arose no doubt, in some measure, from the tendency towards a certain order in affairs, which the institutions and political connections of CHARLEMAGNE had begun to generate. But exclusive of the consequences of that momentous reign, they were besides affected in the most sensible manner by a set of remarkable customs, common to all, which began to be visible about the eleventh century, and which are not more

(f) Villaret, 4. 459.

important from their effects than they are curious from their nicety. They are indeed so different from those that have been related; were so long known; and so intimately felt; that we cannot turn our view to the subject, without being struck with the visible and potent influence, which they had upon the laws of the world.

C H A P X I.

OF THE INFLUENCE OF PARTICULAR INSTITUTIONS.

ABOUT this time, we find all the kingdoms of Europe ; however distinguished from one another in race or manners ; however different in their states of improvement, or marked by particular animosities ; agreeing in the main, in the five following points :

I. In adopting the remarkable polity of the FEUDAL SYSTEM ; the intricate connections to which it gave rise ; and the numerous rights of mutual interference which it perpetually afforded.

II. In concurring in one general form of RELIGIOUS WORSHIP ; and particularly in obeying one SPIRITUAL HEAD, whose usurpations, which first began to assume strength in this century, soon brought the whole of their temporal affairs under his dominion ; and whose bigotry, ambition, or avarice, changed the very spirit of *true* Religion,

ligion, and inculcated as a duty, the hatred and persecution of all those who thought differently from themselves.

We shall soon have occasion to observe the new and remarkable appearance which EUROPE assumed in consequence of this; and the great difference between the Laws of War among *Christians*, and Infidels, which it promoted.

III. In reviving, and even exceeding, the HEROIC AGES of antiquity, and setting up a barrier, no less strong than splendid, against the mischiefs and injustice, which, though not the immediate consequence of the FEUDAL SYSTEM, were fostered by it to a dangerous and lamentable degree.

The extraordinary and beneficial effect which CHIVALRY, the Institution we speak of, had upon the Law of Nations for several centuries, must have shewn themselves forcibly to every mind of common enquiry.

IV. In those frequent NEGOTIATIONS, TREATIES, and POSITIVE CONVENTIONS,
fo

so peculiar to the *European Nations*, with all their numerous train of the *Casus Fæderis*, *Guaranties*, *Alliances*, and *acquired* rights, which must of themselves alone have been able to modify any *Law of Nations* that might have existed; which certainly often interfered with the *Rights of Nature*; and form, what the writers call, the *Positive Law of Nations*.

V. And Lastly, In endeavouring to settle a certain scale of Rank and Precedency among one another, upon principles peculiar to themselves, and the religion which united them; in marking out a difference in degree between certain titles, and particular forms of government; and consequently in forming a gradation in the pre-eminence of the various Sovereignties which composed the European Republic. This, although from the stubbornness and pride of various nations, it was hardly ever effected with accuracy, was still perpetually attempted, and attempted upon arguments and principles, of which the ceremonial of the rest of the world was wholly ignorant.

I am

I am well aware, that with respect to three, at least, of these five points ; it may be objected that they were known before the eleventh century, and that therefore the epoch we have adopted has been ill chosen. If we consider the subject, however, with any attention, the objection will lose most of its force, when we find that although these customs were known, their effects had hardly been felt. The *Feudal Law*, for example, had been long known in Europe ; it has been discovered by some Critics among the institutions of *Rome* ; (a) and it is certainly to be traced to the woods of *Germany*. It did not arrive, however, at its full growth, till about the *eleventh century* ; and though it may be said to have been universal before that period ; it was not till afterwards, that it was universal, in all its mazes, its tyranny, and its vigour. (b)

(a) Blackst. Com. 2. Ch. 4.

(b) See Blackst. 2. 4. 5. Craig. J. Feud. Lyttelt. Hen. 2. 1. Roberts, Ch. V. 1. Henault. Hist. Chron. de Fr. rem. sur la 2^{nde} race. Montesq. E. des Loix, L. 30. passim. Velly Hist. de Fr. 1. Putter. Const. of Germ. 1. Hume. Append. 11. to Hist. of Eng. takes no notice of the Chronology of the System. Pfeffel Droit pub. d'Allem. (1. 234. 288) attributes it to the *twelfth* century.

In

In England in particular, though its outlines were familiar to the *Saxons*, it was by no means the same with that observed by the rest of the world, till after the *Conquest*.

It is well known that the consequences of the battle of *Hastings*, were not confined to the mere change of masters from HAROLD to WILLIAM. The laws of the land; the nobility of the realm; the manners and language; and the art and maxims of war, which prevailed among our ancestors, underwent an alteration during the Norman reigns, and almost during the first Norman reign, the effect of which is not even yet worn out. But if this had not been the case; had William succeeded quietly to the throne; the mere circumstance of his uniting *Normandy* with *Britain*, by which he laid the foundation for those extensive *feudal* connections on the Continent, which so entirely engrossed the nation for many hundred years afterwards; would have marked the century in question, as a most important one to this kingdom. The animosities and friendships, the numerous and intricate claims, and the thousand causes for war, to which that connection gave birth, will

will make it ever be considered as a very momentous æra in the history of the LAW OF NATIONS as observed by the *English*.

With respect to CHRISTIANITY, I am far from imagining that its influence on the mind was not felt long before this period ; and in part it has already been touched upon. (c) Its *good* effects will still continue to be traced ; but, unfortunately, the effects chiefly to be described, arose from the *corruption*, rather than the *purity* of the Church. It will be sufficient to remark that this was the age of GREGORY VII. the firm supporter, if not the founder of these Papal usurpations, which amounted to a tyranny the most wonderful that ever subjugated the mind of man : That this was the age which saw the commencement of those desolating wars, which took their rise from zeal alone ; were conducted, from mistaken principles, in a manner such as rendered the heart more stubborn than it really was ; and so far, did as much mischief to the Law in question, as in other respects it had

(c) Chap. VIII. ad fin.

sometimes done good. This also was the age to which several distinguished kingdoms of Europe actually attribute their conversion, (or at least the extension of their conversion) to CHRISTIANITY; and they were therefore only now introduced to participate in those effects upon the law, to the production of which, it will be shewn it so powerfully contributed. Paganism still existed in many parts of *Denmark, Sweden and Norway*, and in almost the whole of *Prussia and Muscovy.* (*d*)

With respect to CHIVALRY, it is acknowledged that its foundation was laid in this century; and as for the CEREMONIAL of Europe, it seemed unknown till long afterwards: and although the custom of making TREATIES had been from old time in use; yet their effect upon the politics and public maxims of the world before this æra, it would be difficult to discover, if they ever had been felt.

(*d*) Puffend. de reb. Succ. the reign of Ingo. and Introd. à l'Hist. Univ. 5. Chs. 1, 2. Mod. Un. Hist. 28. 460. 29. 411.

It is, therefore, with more propriety than at first it may appear, that I have reserved the consideration of the impressions made upon the law of nations by the five circumstances above mentioned, for the æra I have fixed upon. At the same time it may not be unnecessary to premise, that in the following investigations, such very strict attention to any particular custom has not been paid, as to confine it *exactly* within the bounds of the period proposed. In general, whenever I have found a law, or maxim, at its height during this time, I have chosen to mention it here; but at the same time I claim the liberty of searching for its commencement in the century before it, or of pursuing it to any number of years afterwards, if afterwards it should be found to exist.

The field is now wide before us; and without any particular reason for preferring it, I shall consider the different points, in the order in which they have been mentioned. And first, therefore, of the FEUDAL SYSTEM.

CHAP. XII.

OF THE INFLUENCE OF THE FEUDAL SYSTEM.

IN observing upon the effects of this remarkable and extensive Institution, it does not fall within our plan to give any regular account of its various regulations, its general spirit, its disputed points, its thousand niceties. Such knowledge must be supposed to have been already obtained by those who come to the present enquiry. To examine it would surpass the scope of this Treatise; and even if it did not, the subject has already received all the light which the labour, talents and judgment of the best heads in Europe have been able to give to it. Taking it therefore for granted, that the whole learning upon the point, is in the possession of the reader; I shall proceed merely to examine its effect upon the law of nations during the centuries when it chiefly prevailed.

That effect, it must be owned, was not visibly to improve mankind; there was not

so great a difference as might be expected between the nations with whose customs we have been so much shocked, and those of the feudal sovereigns. The chief seems to have been, that the former were continually migrating; the latter had become stationary; the former give us the image of armies moving from plain to plain; the latter of armies intrenched in their camp: but war was equally the business and the delight of both, and both were bloody, insolent, and rapacious.

The superiority, however, which is always to be observed in stationary over wandering nations, came at last to shew itself; and the wars of the times, although not less frequent than before, began to be conducted on a sort of principle and arrangement, approaching somewhat to a settled system. The whole life of the Barbarians was passed in arms, and almost in battle; and when to die a violent death was a religious duty, it would have been almost absurd to have required any cause for taking arms. (a) When government, how-

(a) Vid. Sup. Chap. VII.

ever, came to be well established throughout Europe, although little attention was for a long time paid to it, yet it became a general law to require a cause for hostility; the nature of sovereignty began to be understood, and the idea of *legitimate* and *illegitimate* wars was thus by degrees adopted. On this situation of things, the feudal establishments operated with considerable effect; and, by a minute attention to their spirit and genius, we shall discover a variety of points in which the interests and connections of nations were extended and modelled in a manner sometimes advantageous, sometimes the reverse, but which, had it not been for the *feudal polity*, would never have been known.

One of the most obvious and general of its effects, was the great multiplication of the States of the world, and by consequence, unhappily for mankind, the multiplication of its causes for war.

A large portion of the Earth, governed by one head and properly civilized under one common Jurisdiction, must have fewer of these causes, than the same portion of the

Earth, divided into a number of states independent of one another. In the former case, differences are accommodated by the peaceable mode of trial and sentence; in the latter, the most trifling personal quarrel, and, (if the subdivisions are pursued to any extent) the common dissensions of *private* life, become the signals for public and general hostilities. Where this therefore takes place, not only the manners of mankind, but their Law of Nations, must be considerable influenced; and such was the effect of the Feudal System upon the earlier ages of Europe.

It is the more necessary to examine the point under the present head, since none but Sovereigns can make *legitimate* war; and as the Barons' wars, form a conspicuous part in the history of these ages, we must naturally refer to that which bestowed upon them a right so important.

This privilege, then, of taking arms at pleasure, which, from the more private rank and the subordination of those who possessed it, was known by the characteristic term of PRIVATE WAR, was the most valuable right
I in

in the eyes of an antient Baron which he possessed, and one of the last which he parted with. However, it was rather modified and brought into a shape capable of producing more energetic mischief, than *instituted*, by the Feudal Law. Most barbarous nations are remarkable for the determination with which families and friends pursue and avenge their injuries, and this from a political, as well as a friendly motive. The antient nations of Germany, (*b*) as well as the Indians of America, present us every where with this custom. From the former it was derived to the different nations of Europe, (*c*) and it was not only the disposition, but the duty, of every Family to avenge the loss of any of its members upon the family which had caused it. The hostilities which arose in consequence, were called FAIDÆ (*d*), FEID, or

(*b*) Suscipere tam inimicitias seu patris, seu propinqui quam amicitias necesse est.—Tacit. de mor. Germ. C. 21.

(*c*) It continued among them six hundred years.

Henault. Hist. Chron. de Fr. rem. sur la 2nde race.

(*d*) Spelm. Gloss. voc. Faida.

Du Cange. Dissertation 29 sur Joinville, p. 330.

FEUD ; (e) the Laws of most of the western countries not only let them pass unpunished, but, by regulating, gave them authority ; and so high was this duty carried, that in many places, whoever succeeded to an Estate, succeeded to the vengeance due for the death of the last who had possessed it. (f)

As the notions of justice, however, improved, attempts were made to curtail, and by degrees to abrogate this pernicious right ; (g) but their success was comparatively small ; and when, through the weakness of the Carolingian Monarchs in France ; (h) the disorders of the Heptarchy in England ; and of the elective Government in Germany ; (i)

(e) Hence the phrase still in use, of “ Deadly Feud,” to express the extremity of hate between persons or families.

Stewart’s V. of Soc. 250.

(f) *Ad quemcunque hæreditas pervenerit, ad illum Ultio Proximi, &c. debet pertinere.*

Leg. Angl. & Werinor. ap. Lindenb. tit. 6.

(g) In England, so early as the time of King Edmund. An. 941.

L. L. Edm. ap. Spelm. Gloss. et Wilkins. Leg. Sax.

(h) Montesq. & Henault. ub. sup.

(i) Pfeffel. Droit. pub. d’Allemagne abreg. & Putter. from the reign of Arnulph to Hen. V.

the

the power of Corporations in Italy; and the community of territory which was left in Spain, for every one who could conquer it from the Moors; when, through these causes, the independence of every Lord who owned a fortress, or could maintain a man in arms, was firmly established; the FAIDA was eagerly adopted, and extended into the right of Private War, by all the Barons throughout Europe. (*k*)

A new picture thus opens itself before us; the western world was not only divided into a variety of independent nations, governed in their intercourse by certain general customs; but each of them again was subdivided into subordinate States, acknowledging indeed

(*k*) With deference to that learned writer, this seems a more probable account of the rise of Private War among the Feudal Barons, than that adopted by Professor Putter, (*Constitut. of Germ. translat. by Dornford. B. i. C. 7.*) who contents himself with attributing it merely to the usurpation and pride of the Barons in the moments of weakness in their Kings. This, as has been observed, might have fostered and regulated it; but it surely was originally nothing more than a continuation of the FAIDÆ, which had long been legal, and were never entirely suppressed.

some one LORD PARAMOUNT; but all of them equally independent of one another, with the greater Kings of the Earth. France, Germany, Britain, Italy and Spain, were carved out, as it were, among the Lords of innumerable Castles, (1) who made War and Treaties with all the vigour and all the ceremonies of powerful Monarchs.

The Corps Diplomatiques are full of these Treaties, in which nothing can be distinguished in the intercourse of these subordinate

(1) Nothing can bring this more forcibly to our observation, than the bare recital of the number of Castles and Fortresses possessed by the Barons of various Kingdoms. In England, at the peace between Henry II. and Stephen, *eleven hundred and fifteen* Castles were ordered to be destroyed.—Lyttelt. H. II. i. 418.—In France, upon a negotiation for peace between Edw. III. and Ch. V. in the year 1376, the Plenary Power of the French Ambassadors contained a state of the fortified places they were willing to give up to Edward. They amounted to the astonishing number of *fourteen hundred* walled Towns, and *three thousand* Fortresses, in the province of *Aquitaine alone*.

Villaret. Hist. de Fr. 2. 491.

When we consider that these were not entertained for the public defence against foreign enemies, but chiefly for that protection which is now afforded by the Laws, without the assistance of a single Garrison, how much reason have we to rejoice in the changes of the times!

Vassals

Vassals, from that of independent Kings, except when mention is made of the rights of the *Lord Paramount*. Stewart and Lyttelton have thought it worth while to preserve several of them in their Appendices; and a serious attention to them will sufficiently refute a marked expression of a writer whose very high authority would have possibly stopped me from proceeding in these considerations, had he not thrown it out as a mere *obiter dictum*. *Du Cange*, after detailing the laws which governed the custom of private war, and observing that *the right was universal among all the Western States*, observes, “Cependant cette faculté de se faire ainsi la guerre, est contraire au Droit des Gens, qui ne souffre pas qu’aucune, autre ait le pouvoir de déclarer et de faire la guerre, que les Princes et les Souverains, qui ne reconnoissent personne au dessus d’eux.” (m)

In this observation, the subject of the law of nations was not regularly before *Du Cange*; or, if he had really considered it, he neither

(m) Dissertat. 29. sur Joinville. p. 342.

had taken the view of it which I have done, in considering it a particular law, confined by custom to particular nations ; nor had he actually considered the whole nature of Sovereignty, which has a variety of modifications that allow a feudal Vassal to be fully Sovereign *quoad* the right of making peace and war, with all but his Lord Paramount.

It is true that Charlemagne had denied them this rank, even as it related to the right of making war ; and the following Capitulary tends to support the opinion of PUTTER respecting the origin of that right : (n)

“ *Nescimus qua pernoscia inventione a non-*
 “ *nullis usurpatum est, ut hi qui nullo ministerio*
 “ *publico fulciuntur, propter sua odia et diversissi-*
 “ *mas voluntates pessimas, indebitum sibi usurpant*
 “ *in vindicandis proximis et interficiendis homini-*
 “ *bus vindictæ ministerium : et quod Rex saltem*
 “ *in uno exercere debuerat propter terrorem*
 “ *multorum, ipsi impudenter in multis perpetrare*
 “ *non metuunt propter, privatum odium.*” (o)

(n) Vide note k, page 343.

(o) Capit. carolomag. L. 5. Sec. 180.

But

But although, during the time of CHARLEMAGNE, the privilege might have been thought an usurpation; yet, during the succeeding ages, when the feudal system had become what it is generally considered, and had assumed that regularity of shape which it continued to wear so long; the vassals were men of very superiour consequence to that which they had before enjoyed; and, as far as it relates to the right of war *with one another*, were not to be distinguished from States the most independent. Hence therefore, when PHILIP AUGUSTUS proposed to RICH. I. in a treaty of peace, that their barons should be prevented from making war upon one another; it was refused by Richard, “*Quia videlicet violare nolebat Consuetudines & Leges PICTAVIÆ vel aliarum terrarum suarum, in quibus consuetum erat ab antiquo, ut Magnates, causas proprias invicem allegarent.* (p)

There was this difference, however, between independent States and the subordinate Sovereigns; that the former had no common Tribunal to appeal to, and could only decide

(p) Hoveden. P. 741.

by the sword; while the latter, on the contrary, could appeal, *if they pleased*, to their Lord Paramount; and things were then decided by the judgment of their Peers. Their public maxims also among one another would, no doubt, take their character from the general Laws of their particular Nation; and as Europe consisted of a certain class of Nations, insulated with respect to the rest of the world; so the petty Sovereigns that composed any particular State, may be said to have formed a distinct class, with respect to the rest of Europe.

The accurate *Beaumanoir*, and the elaborate *Du Cange*, have detailed the particular customs attendant upon the private wars of the French Barons, in a manner that throws great light upon the subject; and they will be our guides in much that we shall have occasion to observe relating to them. And first, with respect to the causes for War.

These could only be such crimes as would have been punished with death had the injured party appealed to the civil tribunals, are what *Beaumanoir* calls “Vilains mefaits,” and

and were always some flagrant breach of the Law, as Murder, Adultery, or Treason. (*q*)

When any of these crimes had been perpetrated, war was instantly made by the family injured against that which had done the injury; for on these occasions they were governed by the spirit of the old FAIDÆ. All the relations, therefore, of the injured person were bound to join themselves to his standard; and every one of them not only had a right, but was under obligation to attack the possessions and the persons of every one of the hostile family. The obligation indeed was so strong, that, upon a refusal to comply, men were actually obliged to renounce their relationship, and with it all their rights of succession to family property, in a solemn and public manner, often taken notice of by the Salic Laws. (*r*)

But as Relationship was thus made to confer the most important rights, and to sub-

(*q*) Coutumes de Beauvais. par Beaumanoir. Ch. 59.—
Du Cange. Differt. sur la vie de St. Louis. par Joinville. 29.

(*r*) Velly. Hist. de Fr. 3. 115. Henault ub. sup. & tit.
63 of the Leg. Sal.

ject a person to very cruel duties, it became necessary to define with accuracy how far it should extend, so as to be brought within the meaning of the Law : and it was determined at first, that beyond the seventh degree of affinity, and afterwards, beyond the fourth, where the Laws of the Church permitted marriages to commence, any one who chose to stand neuter, was not bound to take part with his family. If therefore, prompted by affection, or a warlike spirit, he still chose to fly to arms, he was then considered as a principal, and as such, was obliged also to declare war in form ; (s) so that it should seem, those who were within the degrees of affinity were not bound to comply with this ceremony after it had once been gone through, by the person who acted as principal. (t)

Such principal was called "CHEVETAIGNE," or "QUIEVETAINE," evidently the radix of

(s) Du Cange. up sup.

(t) Coutum. de Beauv. C. 59. Du Cange. Differt. 29. sur Joinville. p. 333. These are circumstances sufficiently remarkable, but which either escaped the notice, or did not fall within the subject, of Dr. Robertson. Introduct. to Ch. 5.

the English word CHIEFTAIN, and signified a person who, to revenge an injury done to his family, declared war against the offender. (u) The forms of that declaration were solemn and worthy of imitation; they admitted also of so many modifications, that a thorough knowledge of them must have constituted no inconsiderable part of the jurisprudence of the times. They seem, however, to have been arranged under the two divisions of DEEDS and WORDS,

War was declared by DEED, when it arose on the sudden, "*Quant caudes melleés sourdent entre Gentixhommes d'une part et d'autre;*" (x) and in this case, all those who were present, were obliged to take part in it, according to the side to which they were attached. (y) It was declared by WORDS when the principals sent defiances to one another. "*Quant li un manece l'autre à fere villonie, ou anjude de son cors.*" There was, however, a very material distinction between the conduct of the Relations, and that of the Princi-

(u) Beauman. Ib.

(x) Ib. Id.

(y) Du Cange. 333.

pals ; for the latter, being supposed to understand one another's causes for complaint, might enter upon the war immediately after the declaration ; while the former, who might live at a distance, or might not be acquainted with the procedure, were allowed forty days to prepare themselves, unless they happened to be actually on the spot when the quarrel broke out ; and this regulation was made by PHILIP the HARDY, according to Beaumanoir, (or Saint Lewis, according to Du Cange), (z) as the means of abolishing by degrees the whole of the practice in question. In Germany also, by what was called the *Landfriede*, or *Peace* of the Empire, a (regulation of Frederick I. confirmed by the GOLDEN BULL,) a Baron going to war, was obliged to declare himself an *Enemy*, and give three days notice to his adversary. (a)

From this duty in the family to make common cause, it followed, that if two Brothers made war upon one another, the Law by which they were bound to assist

(z) Du Cange. 334.

(a) Putter. L. 2. C. 10. Golden Bull. Ch. 17. De Diffidationibus. ap. Du Mont.

could not take place, the family being equally related to them both, a case which was altered if the Brothers were only uterine. (b)

It is needless to observe, while treating of the effects of the Feudal System, that all the *Vassals* of the Lord supported him in the war. What, however, was rather remarkable, and can only be explained by the peculiar nature of that system, they could not be attacked except while in arms, and on actual duty. As soon as they had returned home, upon the conclusion of their campaign, though the war might continue between the principals, they ceased to be parties; having barely performed the regular service required of them by the Feudal Law. (c)

The rights of the Individuals of the family were no less important when the difference

(b) Beaum. ut sup. Du Cange. p. 333.

(c) Beaumanoir, Ch. 59. It is extraordinary that Dr. Robertson, whose accuracy and observation upon this subject no one can question, with Beaumanoir before him, has also neglected this circumstance, the importance of which as to the Law of Nations must be evident.

came to be terminated, than they had been on the breaking out of the war. They were all to be consulted, and all of them had a right to put a negative on the negotiation. This negative, however, was not binding upon those who were tired of the quarrel, and were willing to make peace; and in that case therefore the persons concerned, assumed new situations. He, who perhaps had been the original QUIEVETAINE, retired from the war; and he, who had only engaged as auxiliary, was left as principal; nor were any of his family, not even the person whose injury had been the cause of the feud, bound to assist him. But that it might be understood what was the precise situation of the parties, new declarations were to be made, in which it was known who were to be considered as friends, and who were to remain as enemies; and if without such declaration any act of hostility was committed, the perpetrator was guilty of a kind of treason, (*paix brisée*) and might be punished with a halter. (*d*)

There

(*d*) Beauman, Pa. 301, et infra. The President Henault seems to have lost sight of his usual accuracy in throwing the rights of Private War and of the Duel together. Immediately

There were three modes of terminating these differences, according as the parties could agree.—I. By making a regular treaty of peace.—II. By taking bonds of assurance from one another, to suspend hostilities, and abide the decision of a superiour Lord.—III. By single combat.

The first, as it was not peculiar to the *Feudal System*, need not be taken notice of here. By the second, either party, (and generally, as was natural, that which was the weakest) might summon his adversary to the Lord's Court, and oblige him to give bond that he would not molest him farther, either in his person, in his family, or his goods, but bring the difference regularly before the Jurisdiction of the Court. In order to understand this

mediately after descanting upon the mischiefs of private war, he says, "Cependant ces combats eurent besoin depuis de la
" permission expresse du Prince; en sorte que c'etoit une
" crime de leze majesté de se donner Camp et Jour," &c.
(Rem sur la 2nde race.)

This and what follows evidently have reference to the Laws of Single Combat, which was a mode of legal trial, and had no connection with the right of Private War, a right enjoyed as a privilege of the Fief, and in spite of the authority of the Sovereign.

the better, it must be remembered, that although two Barons, having the right of war, might, and generally did, fly to arms upon every quarrel, yet this did not destroy the power of civil tribunals. Though much neglected, they were still open, and when appealed to, did justice in the manner they best were able. None, however, but the Courts which possessed the privilege of what was called the HIGH JUSTICE, in other words, the power of life and death, could take cognizance of these disputes; the reason for which will be obvious when it is recollected that none but crimes which in the event of conviction could be punished capitally, were the fair and legal causes for war during that time. (e) We may imagine, however, the little

(e) Vide supra. Dr. Robertson, in his Note X, Sec. 1. Introd. to Ch. 5. in which abundance of learning is displayed, has been somewhat inaccurate, or rather not ample enough in his account of this matter. He contents himself with saying that Bonds were granted voluntarily, or exacted by the Magistrate, to abstain from hostilities, and that afterwards, if any were committed, the penalty of Treason was incurred. He makes no mention at all of *the trial of the original difference before the Civil Courts*, the very cause, probably, why it should then be considered as Treason.

efficacy

efficacy of this mode of terminating differences, when the strongest party was often superiour, not only to his Adversary, but to the Judge himself; for it depended upon the accidents of power or firmness in the Lord, whether substantial Justice could ever be done. So late as the year 1224, Fowkes de Breauté, having thirty-five verdicts of disseisin past against him, set the King's Judges themselves at defiance, and *nimis inconsulte agens*, to use Matthew Paris' expression, bound them in chains, threw them into Bedford Castle, and confined them in the Dungeon; nor could he be punished according to his merits; for though his Brothers and others who assisted him, to the number of twenty-four, were hanged, he himself escaped with the milder punishment of exile. (f)

The third mode of terminating a private war, was by DUEL, the nature of which is too well known to need any particular discussion. We may observe, however, that although *Beaumanoir* has considered it as a separate mode, it rather seems to have been

(f) M. Par. 320.

the consequence of the last, namely, the Appeal to the Lord's Court; the Reader not being to be told, that even before the regular Jurisdiction, the DUEL was often the very mode of the trial.

Such is the account of the maxims of Private War, as it prevailed among the Barons of France; and which, according to the System we pursue, may be not unreasonably considered as a part of the Law of Nations in this time.

But *France*, the fairest, and most extensive country of the Christian World; the Parent of so many Colonies, and even of Kingdoms, (g) could not fail to have much influence upon the maxims and manners of other Nations, and it may therefore be not unfairly supposed, that much of the genius and spirit of these Laws, pervaded the Feudal Polity in other parts of Europe.

(g) Of Sicily, of Naples, of Jerusalem, of Flanders, at one time of the whole Greek Empire, and in some measure of England. See the Histories.

In *Germany*, Private War raged with universal violence; and from the elective constitution of the Empire, the consequent weakness of the Government, and the circumstance that the Papal thunders were first directed into that quarter, no efforts of the Sovereign could put an end to it till the very end of the fifteenth Century, when the erection and firm support of the Imperial Chamber, habituated men to a more regular course of Justice. (*b*) Even so late as the beginning of the fourteenth Century, the disorders of that Country rose to such a height, that sixty cities of the Rhine, together with the three Ecclesiastical Electors, the Prince Palatine, and the Duke of Bavaria, were obliged to associate together to defend themselves against the Protectors and Relations of Robbers, on the highway, *who might use their right of war to avenge their deaths.* (*i*) Among other causes for this, there is perhaps none stronger, or which demonstrates the vices of an elective Government with greater force,

(*b*) Pfeffel. sub. ann. 1495.

(*i*) Heiss. 1. 152. Pfeffel. 1. 416. the Deed is in Du Mont. Corps Dip. 1.

than the little interest which the Emperors themselves had to support the supreme authority. As they knew that every advance to good order would weaken the power of their families, in case they did not succeed to the throne, they were the less concerned to attempt, what all the other crowned heads in Europe were perpetually endeavouring to effectuate. Hence the strong circumstance, that the Princes of the Empire, who were originally nothing more than the other Barons of Europe, have continued *Sovereigns* to this day, and may exercise the same right of war in common with all other Sovereigns (*k*).

In *Italy*, which was at a still greater distance from the seat of Government, the Emperor lost his power sooner. The original Vassals of CHARLEMAGNE and OTHO, not only asserted the privilege of Private War as a *feudal* right, but became, and are still, more independent of their Chief, than their fellow Sovereigns in Germany; and this was one of the reasons why the Kings of France allowed them

(*k*) Even the *Lanfriede*, or Public Peace, a fundamental constitution of the Emperor Frederick I. for the preservation

them to clothe their Foreign Ministers with the full representative character of *Ambassador*, which they often denied to the Electors. (l)

In *Spain*, where revenge is almost a point of honour, and forms part of the national character, the right in question may be supposed to have been carried to its height; and its abolition was also proportionably later; the regulations for this purpose having been ineffectual till the time of CHARLES V. in the year 1519. (m)

The history of the *northern* kingdoms, is for many a century the history of anarchy and murder; and Private War flourished there but too long. In *Sweden*, it is remarkable, that it was the Clergy who last possessed the means of it, and so late as the reign of GUSTAVUS ERICSEN, an act of the states of the tranquillity of the Empire; while it threatened Robbers and Incendiaries with the Ban, reserved to every one a right to do justice to himself, provided he gave three days notice to his Adversary.

Putter. B. 2. Ch. 10. Vide Sup.

(l) See Wicquefort de l'Ambassad.

(m) Robertson, Introd. Ch. V. Note X.

was necessary to vest in the King the possession of their numerous Castles. (*n*)

But of all the Nations of Europe, perhaps without the exception of *Poland*, this remarkable right existed longest in the northern parts of *Great Britain*. A HIGHLAND CHIEF was always formidable, even to his Sovereign, as well as to his Neighbours, and his power and name have been dreaded in the extremity of the south.—Nor was it till late in the present century, and that in consequence of the influence of the Pretender in *Scotland*, that they received their final blow. The severity and language of the different acts that have passed against them, bespeak, in strong terms, the manners and customs of this warlike people. (*o*)

In

(*n*) Mod. Un. Hist. 29. 378. Erickson died in 1566.

(*o*) By 1 Geo. I. Cap. 56. the being found possessed of Arms in the Highlands, for the second offence, was punished with seven years transportation; and only men of 400 pounds Scots, revenue, could keep *two* firelocks. Nothing is more characteristic of the spirit of private war than the Inscription mentioned by Johnson, (Tour to the Hebrides, the account of Col.) upon an old Castle in Scotland. “If
“ any man of the Clan of Maclonich shall appear before
“ this

In this universality of independence in the Barons of Europe, we may imagine that the English were not without their share; and accordingly the right in question was transmitted to them from the Saxons, and but too often exercised. They maintained Courts of their own, and officers whose characters bespoke the parade of royalty under the names of Constable, Marechal, Justiciary, Seneschal, and Chancellor. (*p*)

The families of Northumberland, Gloucester, Warrenne, and Warwick, are illustrious for this sort of power, and of the latter, he who was known by the name of King Maker, was alone supposed to support 30,000 retainers at his different Manours and Castles.—We have a further strong instance of his power, and the spirit and sovereignty assumed by the feudal Lords, in the Memoirs of Commynes. WARWICK was Governor of Calais, and the town seemed little to consider who possessed the throne of England, but rather looked to

“this Castle, though he come at midnight, with a man’s
“head in his hand, he shall there find safety and protection
“against *all but the King*.”

(*p*) Hume’s Appendix II.

him

him as their Sovereign. When, therefore, Commynes was sent there from the Duke of Burgundy, he found the whole Garrison in his Livery, and as a compliment had the Apartment assigned for him, decorated with white Crosses (the Arms of France) and rhimes, importing that *the King of France and the Earl of Warwick were good friends.* (q)

Dr. Robertson, however, observes, that the mention of Private War, in England, is more rare than in other countries; (r) possibly owing to the cause he assigns of the superiour vigour of the Norman Kings. The fact is certain, that though many of the Barons rose to a great height of power, there were in England none of those immense fiefs which in France, Germany, and Italy, split the monarchy into fragments, (s) nor was the un-

(q) Commynes, L. 3. Ch. 6.

(r) Note X. Introd. to Ch. 5.

(s) Henry, the Lion of Saxony, extended his territories from the Adriatic to the Baltic, and possessed Saxony, Bavaria, and Westphalia. Heneault 1180. Puffend. Introd. 3. 271. Putter. 2. 10.

The great fiefs of *Normandy, Aquitaine, Bretagne*, and above all, *Burgundy*, were able at any time to shake the whole Monarchy of France.

wise policy pursued, which divides the fairest portions of the Kingdom into Apanages for the children of the blood royal, a measure so long destructive to the Interest of other Countries. (t)

We find then the right of *Private War* universal throughout Europe, during the height of the Feudal System; nor were Ecclesiastics less eminent for the exercise of it than the Laity. The Clergy were possessed of Baronies in right of their Churches, and were often personally engaged in the duties which they imposed. (u) As the sacred

(t) Lancaster and Chester were the only Counties Palatine which emanated from the Crown, and were very quickly resumed.

(u) The Bishop of Beauvais was taken in Arms by Richard I. of England. Upon being claimed by the Pope, the King sent his Holiness the bloody Coat of Mail of the Prelate, and replied in the language of Jacob's Sons, "This have we found. Know now whether it be thy Son's Coat or no." Upon which the Pope is said to have answered, that as he was rather the Soldier of Mars than the Servant of Christ, he should be considered as such, and ransomed at the King's will. Holinshed. R. 1.

The Bishop of Cambray again, on the other side, was taken by Philip Augustus, and the two Prelates regularly exchanged.

character,

character, however, exempted them, if they pleased, and at any rate was inconsistent with a martial one, even in a martial age, the Officer charged with the management of their Temporalities, succeeded to this part of them also, and was called VIDAME, or VICE DOMINUS. Like the Viscount, he soon converted his office into a fee, and by becoming the vassal of the Bishop, or Monastery, exercised the right in his own name. (v)

Having thus given somewhat at large the history of Private War, modified by the Feudal System, as part of the Law of Nations during the earlier periods, it would not be at all irrelevant

(v) Hence Vidame became a Seignory or Lordship, and was very lately attributed to several French Noblemen; as the Vidames of Chartres, of Amiens, &c. who held their lands of the Bishops of those places. See Pasquier Recherches de la France, 8. 5. Du Cange. voc. Advocatus. Du Mont. 1. 93. & Dissert. 24. sur Joinville. p. 331.

The famous Thomas a Beckett, when Arch Deacon of Canterbury, followed Hen. the II. in an expedition to Tholouse, and maintained, at his own charge, 4000 stipendiary Soldiers, and 1200 Knights, the latter of whom dined every day at his own Table.

Lyttlet. Hen. II. 2. 161.

to

to our subject, if we went as largely into the means by which the custom was abrogated; and as every work should be as complete within itself as possible, we might be justified in laying it before the reader.

As however many of those means took their rise from the influence of CHRISTIANITY, which we intend to treat of separately, and as the outlines of them have already been traced with much ability by Dr. Robertson, we shall content ourselves with referring to him, (x) and reserve what we have to say upon it for another Chapter.

The next great feature of the Law of Nations which the Feudal System produced, is that remarkable and intimate connection; that constant pretence, and indeed, *right* to interfere with one another, which the states of Europe mutually assumed in consequence of the divisions and subdivisions into which they had fallen. The creation of Fiefs and Arriere Fiefs, over almost all the Western

(x) Note X. Introd. to Ch. V.

countries, present to us a picture of a few Lords Paramount, of small real power, but great pretensions; pretensions which were multiplied, and whose intricacy and mischiefs were infinitely extended, when the larger fiefs came to be portioned out, as they were, into ten thousand petty Sovereignities, subordinate to mediate, as well as immediate Lords. By this well known, but intricate system, there was scarce a state then in existence, which could take any public measure, without more or less involving the right and interest of some other state, of which, without this system, it would have been wholly independent.—The common rights of mankind were invaded by it, and persons possessing particular countries, even though by a *royal* title, could not acquire certain other countries at the same time, without a breach of Law. It was thus that, from the time of the Emperor FREDERICK the Second, who, as King of Sicily, became the Vassal of the Pope, no King of that country was allowed to aspire to the Empire; or, if he did, he was obliged to renounce his kingdom; (y)

(y) Burigny Hist. de Sicile 2. 25.

a constitution which three centuries afterwards, was forcibly pleaded by Francis I. of France, against Charles V. in their celebrated contest for the imperial dignity, in which perhaps we may discover the first traces of that famous European system, called the Balance of Power. (z) We have seen the same sort of renunciations in modern times, but they have been by express conventions, and in the Spirit of that remarkable policy; these constitutions, on the other hand, formed a fundamental law of the two countries, and were rather in the spirit of the *feudal* customs, which authorized the Pope, the superiour Lord of Sicily, to prevent his hereditary Enemy, the Emperor, from aggrandizing himself in Countries so near him.

A Vassal could not even marry without the consent of his Lord, lest the inheritance might that way pass to his enemy, of which, among a variety of examples, there is an eminent one furnished by the reign of Saint Lewis. The Count of *Ponthieu* had agreed to marry the eldest of his four daughters,

(z) Guicciard. sub. an. 1519.

and his principal heiress, to HENRY III. of England; the parties had been betrothed, the young Countess had already been espoused by proxy, by the Bishop of Carlisle, and the Pope himself had guaranteed the alliance. But notwithstanding the affair had gone such lengths, the King of France, as superiour Lord of *Ponthieu*, interfered upon the ground of the *feudal* law, and spoke in so high a tone (*a*) that neither his vassal, nor Henry, thought proper to go through with the treaty. Upon the same principles it was fairly imputed as a cause of complaint to Charles, the last Duke of *Burgundy*, that he had married the Sister of the King of England, the enemy of France, of which he held. (*b*) When we consider the immense power, and the independent Sovereignty of the Duke of *Burgundy*, in all other respects, (one of the greatest then known,) we must be forcibly impressed with the effect of such customs.

It is remarkable, that there was no Monarch in Europe, who, in the earlier ages, enjoyed absolute independence, and

(*a*) Velly. 2. 348.

(*b*) Communes.

did not owe fealty to others for some part of his dominions. For though there might be many Lords Paramount, in respect to the greater part of their territories, yet they mutually did homage to one another for other parts of them.—Thus, Scotland owed homage to England, for Cumberland, and Huntingdon; England to France, for Aquitaine and Normandy; France to the Pope, and the Empire, for Naples and Milan; the Emperors to the Empire, for their hereditary possessions; the King of Spain to the Pope, for Sicily and Naples; Sweden to Denmark, Denmark again to the Empire, and so on through an endless circle. The form of this homage was the most abject humiliation that freedom could submit to; or that pride could undergo.—The possessor of a fief, let what might be his power in other parts, was bound within a year after possession, to appear before his Lord, unarmed, ungirt, bareheaded, kneeling, and his hands held in a suppliant manner, *as if in the act of adoration*, between the hands of the superiour, who was seated. In this posture he was obliged to repeat the following oath: “ From this day forth to my last, *I be-*
“ *come your man*, of life, and limb, and earthly

“honour; I will be true and faithful to you
“and yours.” (c)

This degrading ceremony was continually brought into practice, and is well described in the case of EDWARD III. Summoned to do homage to PHILIP of VALOIS, as Duke of Guienne, that Monarch received him at Amiens, at the head of all the nobility of France, preceded by the Kings of Bohemia, Majorca, and Navarre. As soon as he approached the throne, the Great Chamberlain commanded him to take off his *Crown*, his *Sword*, and his *Spurs*, and to fall upon his *knees* on a cushion prepared for him; a cere-

(c) Novus quisque in hæreditatem feudalem successor, tenetur infra annum se domino sistere, atque Inermis, Diffinctus, Nudus Capite et provolutus in genua, supplicibus item manibus, inter sedentis domini manus comprehensis, eum (*velut adoraturus*) in hunc modum alloqui.
“Devenio homo vester ab hac die in posterum, de vita,
“de membro, et de terreno honore verus et fidelis vobis
“ero, &c. &c.”

From the words of this Oath, *Homo vester*, Sir Henry Spelman derives the word Homage, and not from ΟΜΑΩ juro, as some Critics have done.

Spelm. Gloss. voc. Homagium.

See also Coke Litt. 60.

mony,

mony, says Velly, very humiliating for a soul so proud. He obeyed, however, though it was easy to trace on his countenance, the marks of the disgust he felt, at being forced to humble himself so low before such illustrious witnesses. (*d*) The ceremony, had continued the same for above four hundred years; and we must not forget while on the subject, the famous account of ROLLO, the proud Conqueror of Normandy. When Charles the Simple granted him that extensive Dutchy to hold in fief, he was called upon, according to the practice of the times, to do homage for it. They had infinite pains to persuade him to hold his hands within those of the King; but when mention was made of falling upon his knees, and kissing his foot, (for such was the practice of that time,) he swore that he would never bend his knee before any one. It was agreed that one of his officers should do it for him; and whether from awkwardness or design, in lifting up the foot to kiss it, he overturned the Monarch, before whom the Law had thus bound him to humble himself. The style also in which

(*d*) Velly. Hist. de Fr. 4. 398, 399.

subordinate Sovereigns were summoned to do this homage, was equally humiliating. They were commanded “to lay all other affairs “aside, and be with their Lord wherever he “might be within the country,” and by any day he chose to appoint. (e)

But while Sovereigns were thus fettered with respect to one part of their Dominions, they might be in a state of the most absolute freedom with respect to all the rest; they might indeed, probably, be entitled to receive the same sort of oaths from the very Lords to whom they themselves had sworn; the whole depending upon the various tenures of their various domains. It was thus that the Emperors and the Popes were for some time situated; the former doing homage to the latter for the Kingdom of Sicily, and at the same time claiming superiority over him in right of the Empire. In such a state of things, it is obvious that there must have been a perpetual opposition of rights and pretensions; and as the ideas of men, in those days, were not the most perspicuous, and the

(e) Rym. 2. 604.

law, in its purity and simplicity, was seldom allowed to take its course, even in points that were well understood, we must not be surpris'd to find much confusion in the daily practice of the times. Accordingly, though it often might happen that rights were asserted, and hostilities commenced, by a Lord Paramount *as such*, and in his own Dominions; yet if he possessed other dominions in *vassallage*, the distinction was seldom, if ever, admitted. Indeed, as the vassal had sworn to defend his Lord against all enemies whatsoever, without referring to any particular case, he could not consistently become his enemy himself, even though it should be in parts where he ceased to be a vassal. At all events, even on the supposition that his own personal service could be got over, and, that his own immediate vassals might follow his standard, yet one part of his Subjects might then be perpetually called upon to fight against another part; a situation of such intricacy, and which demanded so many sacrifices, that we must not wonder if the Sovereigns of that time incurred forfeitures, and were often fairly declared *Traitors*, for doing that which, in their other capacity, they were legally per-

mitted to do. Here, therefore, the niceties of the feudal law, evidently transferred themselves into the Law of Nations, and begat an endless maze of trouble and confusion, which brought the wars of those times almost always to a state of civil war.

Examples of the above observations are to be found in every page of the history of the earlier ages, and personal contests and hatred among Sovereigns, the consequence of having their passions thus called forth, were the natural result of these customs. To produce them were almost endless, and to the attentive reader of history, unnecessary; those, however, which may be selected in proof of the points touched upon, may be divided into two classes; namely, those which concern the intercourse between superiour and vassal, on matters immediately arising between themselves; and those in which the superiour interfered, in order to do that justice, and afford that defence to his vassals, against one another, which he was bound to do by the system which is the subject of our Commentary.

The

The latter class present to us the picture of a common Court, or high Tribunal, in which Sovereigns, such at least as acknowledged one head, were heard, and their causes tried by other Sovereigns like themselves. An admirable institution ! which, had it been administered, or could it have been preserved to this day, in all its purity, would have often spared those cruel appeals to the sword, which have so frequently swept away thousands from the face of the world.

As the two great Kingdoms of France and England were more implicated in these feudal difficulties than any other, from the immense fiefs possessed by the latter on the continent ; the cases which might be produced, would naturally be most sought for in the history of their transactions, even if we were not, as we are, more interested from birth, and the better means of information, to examine them. I shall, therefore, in the following examples, confine myself chiefly to the old story of the PLANTAGENETS and CAPETIANS.

In the year 1200, John, King of England, was declared guilty of felony and parricide,
by

by the Parliament of France, for the murder of his Nephew, Prince Arthur; his process was regular and formal; he was told that whatever might be the sentence it would be executed, and, upon default, was *convicted, attainted, condemned to death, and declared to have forfeited his lands.* (f)

In this, PHILIP interfered in consequence of *appeal*; there was no quarrel between him and JOHN. The appeal, however, which brought on the war, was from others as well as from the kindred of ARTHUR.

The Story of that unfortunate Prince is well known; the injuries of HUGUES LE BRUN are not. John, being at Paris, was invited to the nuptials of that Nobleman with Isabel d'Angouleme, and was so struck with her beauty, that he carried her off in the way to the church, and married her himself.—Hugues flew to arms, together with his kindred, who were illustrious and powerful, but being foiled by the tyrant, they appealed to Philip, who summoned him before his Peers.

(f) Mat. Par. sub an. 1202. Velly. 2. 194.

According

According to the feudal law PHILIP was right ; and had the natural course of things taken place, without alteration from other external circumstances, it should seem that *England* ought to have remained neuter, and seen its king punished.—But in swearing allegiance, *England* had sworn to defend him against all enemies, and in all cases whatsoever, and it had no right to enquire into the justice of PHILIP's proceeding. Here then is an eminent effect of the feudal system upon the Law of Nations, in furnishing causes for war. The hostilities in which the two nations were thus involved, lasted fifty-six years. (*f*)

In the reign of HENRY III. the viscount of Bearn, a vassal of France, having a dispute with Henry, as *Duke of Guienne*, about the property of certain Castles, threatens to complain of him to the king of France as his superiour lord.

The form of Summons to the Kings of England to do their homage, was constantly regulated, and Philip the Hardy, possessed

(*f*) The story of Hugues le Brun, is in Velly, 2. 192.

such power in Guienne, that he even built cities there, and of his own authority abolished, at the request of the English themselves, certain customs which he conceived to be unreasonable. (g).

In the year 1292 the English subjects of EDWARD I. quarrelling with the French in Gascony, war was kindled between the Kingdoms. *As King of England*, Edward could only be pursued in the usual mode of hostility; *as Duke of Guienne*, he was cited like a common subject to answer before his Lord; and though the greatest prince of his time in power and talents, the *Citation* was fixed on the Gates of a Town in the *Agenois*, and not appearing, his Dutchy was confiscated. (h) It is remarkable also, that in the instrument of citation, he is called King of England, where he was *paramount*, and not Duke of Guienne, where he was really *Vassal*. (i)

(g) Velly, 3. 129.

(h) Ib. 4. 33, 42.

(i) Rymer, 2. 617.

Similar

Similar to this, is a kind of Writ directed by Lewis Hutin in 1314, to Edward II. King of England, commanding him *upon the fealty and love which he bears him*; to arrest the Flemings his enemies wherever he could find them. (*k*) He makes use in particular of the word, *Destroit*, which it should seem had reference to the narrow seas of *England* where Edward was paramount; no mention is made of *Aquitaine* where he was Vassal, except in the direction of the Writ, which is addressed to Edward, simply, "King of England and Duke of Aquitaine." It is true, there was an alliance between the Kings, by which enemies were mutually to be banished, but the word *Fealty*, and the mandatory style of the whole Writ shew, that if this was not really the Law and custom upon the subject, the ideas upon it were at least much confounded.

In the course of the war between EDWARD I. and PHILIP, there is another circumstance, taken notice of by the French historians, which if they are right in their notions of the customs of that time, is of considerable im-

(*k*) Rymer, 3. 488.

portance in the history of the *Feudal Law of Nations*.—Edward suffered Philip to obtain an easy conquest over Guienne, the homage for which was the cause of contention, in order as it is said, *that if he got possession of it again by force of arms, he might then enter upon it in full sovereignty by right of Conquest.* (1) Accordingly, he afterwards sent an Embassy to Philip, telling him that he thenceforth renounced him as his sovereign, and held himself free from all homage. If this was received law, it points out the means by which vassals, who were themselves powerful Lords Paramount in other places, might change their vassallage into full sovereignty. The English historians relate the matter differently, and upon the peace, Philip still remained Paramount of Guienne. These circumstances however do not affect the reasoning, provided the observation of the French writers is to be taken for law.

About forty years afterwards, EDWARD III. lays claim to certain estates in Guienne. Had

(1) Guillaume de Nangis. & see Velly's Comments.
4. 43.

there been no feudal Court, he must have asserted his cause by force of arms; it was agreed upon however, that it should be regularly brought before the parliament of France, which for that purpose was to consist of six peers at least. (*m*)

But nothing exemplifies the effect of the feudal Law more, than the case of EDWARD the BLACK PRINCE. The fortune of France and Spain had often sunk before him; he was at the head of half the former kingdom in Fief, which was thus divided into two nations; and he was supported by the whole force of England; yet upon complaints made by some weaker vassals, he was summoned in the plenitude of his power, from *Bordeaux* to *Paris*, to answer for the conduct which “*out of weakness of counsel and want of knowledge*” he had chosen to pursue. (*n*)

In the same spirit of the law, was the celebrated CHARLES the BOLD treated above a

(*m*) Peers of Edward, as a Vassal of France, Velly. Hist. de France, 4. 457.

(*n*) Froissart, v. 1. ch. 247.

hundred years afterwards, by Lewis the Eleventh. That monarch held an assembly of Notables at *Tours*, to hear complaints against him; and he was judged guilty of leze majesty, attainted, and his process sent to the Parliament of Paris, who by a common Usher of the court, summoned him from *Ghent*, the seat of an Empire equal to France itself. (o) Many of the provinces which gave Lewis this right to interfere, were held till very lately by the House of Austria in common with the rest of Flanders—we may imagine the surprise and indignation which such a proceeding in modern times would have occasioned.

The history of Flanders during the ages before us, contains many cases of the same nature with those related above, (p) and wherever the feudal superiority of France extended itself, those rights were perpetually exerted. In 1355, Charles the Bad, King of Navarre, *but also Count of Evreux*, was arrested at Rouen, thrown into prison, in-

(o) Communes, L. 3. ch. 1.

(p) Du Mont. Corp. diplom. univ. 1. passim. Leibnitz. Codex Dip. 95.

terrogated like a common criminal, and threatened with death. (*q*). If war had not existed at the time between France and Navarre, we may suppose that it would have been the immediate consequence, and thus from the perpetual confusion of authority between dependent, and independent states, the one might legitimately be confiscated, in consequence of the quarrel of the other; the power of the last, was often forced into action, in consequence of the *legal* delinquency of the first.

The spirit of these customs as has been observed, was not however, confined to France: In the contest with Scotland, when John Baliol consented to do homage to EDWARD I. that monarch made him feel his dependence in a manner that would startle the weakest crowned head of modern times; and Rymer has preserved no less than six summonses to him to appear at Westminster, in order to plead like any other subject in the common courts of the Realm. (*r*) In

(*q*) Froissart. anno. 1315.

(*r*) Rym. II. 603, 605, 606, 608, 615, 616.

this, without entering into any unnecessary question, (which has produced so much animosity between the Scotch and English writers) whether this superiority was usurped or not, it is sufficient to observe, that, (his title being allowed,) he did no more than what the then Law of Nations, operated upon by the feudal System, permitted him to do; and Baliol, upon this principle, however indignant, did not refuse to comply.

The Emperors were for ever engaged in contests of the same kind, involving the same train of difficulties. Henry of Luxemburg understood and pursued them; his interference in the affairs of almost every Town in Italy, was founded upon them; and the Crown of Naples was once confiscated in full Diet, in consequence of feudal defaults. (s)

At another time, the Pope who pretended to the right of homage from this crown, knew how to defend his royal vassal, and excommunicated and thereby effectually repulsed the attempts of the Emperor OTHO upon it,

(s) Heiss. Hist. de l'Empire, I. 149, 50, 51.

during

during the beginning of the reign of the famous Frederick II. (*t*) The German Constitution indeed at this day, is pregnant with the genius of this Law of Nations; and had the feudal polity continued in all its vigour, the States of Europe would probably wear an appearance, not very unlike in its effects, that which the Germanic Alliances at this moment present to us.

At the same time that the operation of the feudal system upon the customs of the Sovereigns of Europe, was to introduce a kind of high Court in which many causes of material importance were determined; the Vassals who thus bowed to the authority of their Superior and their Peers, possessed privileges in their turn, which often influenced the turn of public affairs. They were Judges, as well as Suitors, in the Lord's Court, and for the most part claimed the right of opposing, if they pleased, any alienation of his fiefs which the Lord was inclined to make. Thus, they became very important parts of the executive Government of the State, and hence it is, that in almost all the old Treaties of peace,

(*t*) Heiss. 1. 18. Burigny Hist. de Sicile, 2. 22.

the ratification of the greater Barons of the Country, was generally necessary, and appears in all due form together with the signature of the king himself.—The same privilege no doubt might be, and is enjoyed in some countries, without any reference to the feudal system. But this is rather the consequence of particular constitutions, than of the Law of Nations; and in those cases, the particular constitutions must be specified in order to come at the knowledge of the custom. In the cases before us, to say that the feudal system prevailed all over Europe, is to say at once that these privileges were parts of the European Law of Nations.

There was another part of the feudal Customs, which had so immediate an effect upon the rights of states, (and it remains indeed, in many parts, to this day,) that it would be hardly possible in this place to pass it by. This was that famous right of the supreme Sovereign to all those fiefs, whatever might be their extent or power, which were left without a head, when the reigning family failed for want of posterity. In this case the fief reverting to the Lord, he was entitled
either

either to reunite it to his crown, or he granted it out again to other vassals, by the ceremony of Investiture.

No length of possession could bar this right of the Lord, or transfer, consistently with law, the power to grant the fief by will, (though such power in other cases prevailed) or to elect a new Sovereign, by the subordinate vassals. But, as may be supposed, the clash of interests among contending States, was perpetual, and the intricacies of Law without end, when these claims were brought forward. The same difficulties have often attended the Chanceries and Parliaments of particular kingdoms, according to their municipal constitutions ; but these, arising entirely from the feudal law, which was the same or nearly the same, all over the Western nations ; these suits, were brought forward, if I may so say, in the Chancery of Europe itself.

The two Kingdoms of France and Germany, being the two great powers into which the integral empire of CHARLEMAGNE branched, and from which it put forth many
I fresh

fresh shoots; the influence in question was most felt among the kingdoms and states dependent upon them. I shall select a very few examples of it, in proof of the above observations.

CHARLES Count of Anjou, the famous Conqueror of Naples, in 1246, married BEATRICE, youngest daughter of the last Earl of Provence, who willed that she should succeed to the sovereignty, before Margaret her elder sister, the Queen of Saint Lewis. While that monarch lived, Margaret was forced to acquiesce in this disposition. Upon his death however, she prepared to assert what she conceived to be her rights; and in this state of things the Emperor RODOLPH, of HAPSBURG, took upon himself to judge of the dispute. He did this as *Lord Paramount*, the earldom of Provence being a fief of the old kingdom of *Arles*, which had been itself a fief of the Empire, and at that time reunited to it, and in consequence of this right, he gave the investiture to CHARLES. Whoever considers the remoteness of the first Emperors who were sovereigns of *Provence*, and the chain by which this right of

Rodolph

Rodolph proceeded, will have a very complete idea of the point in question. *Provence* was the acquisition of *Charlemagne* in the eighth century;—his grandson *Charles the Bold* being Emperor, granted out the Kingdom of *Arles* to *Boson*, from whose family the Earldom passed by marriage to the Counts of *Barcelona*. Upon the failure of their line in the thirteenth century, the then Emperor, having all the rights that issued from *Charles the Bold*, exercised this act of Sovereignty. (*u*)

Two centuries afterwards, and in another country, upon the failure of the male line of the last House of Burgundy in the person of *Charles the Bold*; *Lewis* king of France immediately seized upon *Artois*, and *Burgundy*, as fiefs of the Crown—the wars of France and *Austria* which have so long desolated all Europe, and which at this moment shake it to its centre, arose in part from this source.

A more important, because a more intricate example, is afforded by *Milan*—the

(*u*) See *Henault, Hist. Chron. de Fr.* i. 238.

quarrel about which was endless between CHARLES V. and FRANCIS I. The rights of Francis were derived to him from Lewis XII. who while duke of Orleans, had married Valentine, the last of the *Visconti* family, the male line failing. The right was questioned merely because the contract of succession, in virtue of the marriage, had not been confirmed by the Emperor, to whom the Dutchy regularly escheated. Lewis however, had afterwards held it by an actual investiture, which again was to convey the right to his posterity, only in the case of the marriage of his daughter Claude with Charles V. then duke of Austria; which, not having taken place, the right still returned to the Emperor—and hence arose another cause of the perpetual contention between the two rivals. (w)

I am sensible that in these cases, and many others that might be adduced, I may almost appear to be relating, what rather belongs to the *JUS PUBLICUM*, as founded upon par-

(w) Guicciard, 1492. 1521. Heifs. I. 215. Note 6.

particular conventions, than the general law of Nations ; but accurately speaking, these contests did not arise in consequence of any *particular Treaty*, or *Renunciation* between two States, but from the mere effect of the feudal Law, known all over Europe, and therefore according to us, the law of Nations itself. In many other points that have been touched upon, this reasoning must be also understood to apply. The Law of Nations, is the law for a particular class of states ; writers upon the subject say (and very properly) *Sovereign States*. But the sovereignty of these states, according to themselves, admits of much modification ; some being Tributary, and some bound by unequal alliances. In general, however, when they have been entrusted with the free administration of public affairs, and have had the power of making treaties, or the rights of war, or of embassy, they have uniformly, by the writers on the science, been considered as forming part of the sovereigns of the world.—But the feudal vassals, however bound to obey their Lords Paramount, in many points, were precisely in this situation ; and they are therefore actually classed

among *States* in the various codes of the Law of Nations. (x)

Indeed whoever recollects that John, and Henry III. were Feudatories of the Pope, and performed services as such, (y) must either deny that those Kings of England were Sovereigns ; or admit that all the Barons of Europe were sovereigns also. Whatever concerns them therefore, must necessarily be related, and the whole spirit of the feudal law, as it governed the intercourse of superiour and vassal, or of vassals among one another, becomes also the spirit of the Law of Nations. In this opinion (though he has rather hinted his sentiments, and by way of comparison, than laid down the point at large,) I am borne out by, perhaps, the greatest of our antiquaries.

“The King,” says Sir Henry Spelman, “divided his territories in different ways ;—
“Provinces to Dukes, Counties to Earls,

(x) Grot. de J. B. et P. 1, 3, 2. Mackenzie Preced. of Nat. 12. Wicquefort de l'Ambass. 25, 39. Vattel. 1. 41.

(y) Hume, 2. 15.

“ Castles and Signories unto Barons ; render-
“ ing unto him, not ex pacto, vel condicto,
“ (for that was but cautela superabundans)
“ but of common right, *and by the law of*
“ *nations ; (for so I may term the feudal law*
“ *then to be, in our Western orb,) all feudal*
“ duties and services due, &c. &c. *though*
“ *no word were spoken of them.*” (z)

Possibly this reasoning may be deemed unsatisfactory by some ; to others it may seem unnecessary ; but as this work may fall into the hands of persons not led by professional habits to consider this part of the subject ; by them it will not be thought an intrusion ; and I have judged it the more necessary to discuss the point, even at the hazard of being thought prolix, because I would not appear from attachment to a favourite idea or system, to introduce into a treatise of law, any thing not warranted by argument and fact.

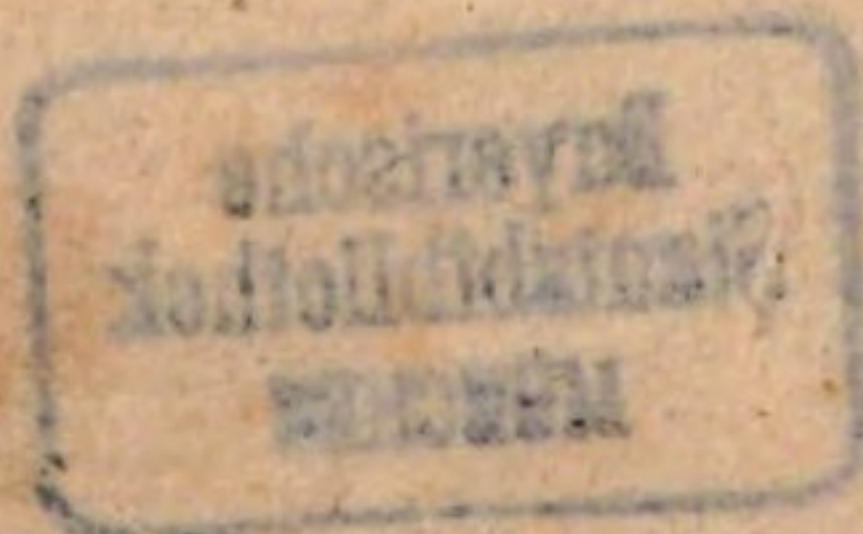
(z) Spelman of Parliaments, ad init.

END OF THE FIRST VOLUME.



ERRATA OF VOLUME I.

Page.	Line.	
8	21	<i>for june, read jure.</i>
15	24	<i>for autan, read autant,</i>
21	8	<i>for is, read are.</i>
25	last,	<i>for Bet. read Bel.</i>
106	7	<i>for Savigism, read Savagism,</i>
133	19	<i>for Turk, read Turc.</i>
133	9	<i>for is, read was.</i>
143	21	<i>for XV. read XIII.</i>
150	6	<i>for accorded, read awarded.</i>
165	9	<i>for Knights Templars, read Knights of the</i> <i>Teutonic Order.</i>
175	last,	<i>for aterna, read æterna.</i>
209	21	<i>for eruption, read irruption.</i>
214	4	<i>for Altila, read Attila.</i>
220	21	<i>dele ()</i>
222	19	<i>for Alarie, read Alaric.</i>
	20	<i>for Genserie, read Genseric,</i>
226	15	<i>for State, read Estate.</i>
	22	<i>for Chilperie, read Chilperic.</i>
227	13	<i>for Secti, read Sancti.</i>
250	12	<i>for mutilation, read mutilations,</i>
368	1	<i>for present, read presents.</i>



BETTERER
derel
nen

Ward, Robert

An enquiry into the foundation and history of the law of nations in Europe,
from the time of the Greeks and Romans, to the age of Grotius in two
volumes

Bd.: 1

London (1795)

J.publ.e. 477 i-1

urn:nbn:de:bvb:12-bsb10557867-2